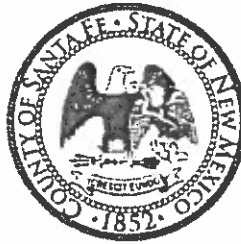


Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## ***MEMORANDUM***

**Date:** June 25, 2014

**To:** Board of County Commissioners

**From:** Bill Taylor, Procurement Manager *BT*

**Via:** Katherine Miller, County Manager *KM 7.1.14*  
Jeff Trujillo, ASD Director  
Adam Leigland, Public Works Director  
Mark Hogan, Projects & Facilities Director

### **ITEM AND ISSUE: BCC Meeting July 8, 2014**

**REQUEST APPROVAL OF AGREEMENT NO. 2014-0256-PW/PL WITH SOUTHWEST CM, LLC FOR THE CONSTRUCTION OF THE KEN & PATTY ADAM SENIOR AND COMMUNITY CENTER ADDITION AND RENOVATIONS IN THE AMOUNT OF \$1,275,605 EXCLUSIVE OF GRT /Bill Taylor**

---

### **ISSUE**

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2014-0256-PW/PL with Southwest CM, LLC in the amount of \$1,275,605 exclusive of GRT for the addition and renovations of the Ken & Patty Adam Senior/Community Center.

### **BACKGROUND**

The Ken and Patty Adam Senior Center is located at 14 Avenida Torreon in the community of Eldorado, New Mexico.

The design of the renovations and addition to the center was completed by R2 Architectural, based out of Albuquerque, N.M. The project will include the expansion of the existing dining area and the replacement of the heating and cooling systems in the senior center. The addition of the new 3,363 square foot community center will provide a new space for early voting, space for seniors to exercise and an area for the community to use after hours and weekends for private functions. The community center will also house the new satellite office which will be used to sell landfill permits. The outdoor space will provide an area that will join both the senior center and library with a patio

and include landscaping. The existing parking area will include new curb and gutter and paving with additional parking spaces.

The Purchasing Division issued Invitation for Bid (IFB) #2014-0256-PW/PL Rebid on February 23, 2014. This solicitation was advertised in the Santa Fe New Mexican and in the Albuquerque Journal and posted on the County's Website. Ten (10) contractors attended the mandatory pre-bid conference and four bids were received from the following construction companies at the March 20, 2014 Public Bid Opening:

Southwest CM. LLC, Albuquerque, N.M.  
ESA Construction, Albuquerque, N.M.  
Longhorn Construction, Albuquerque, N.M.  
RVC, Inc., Espanola, N.M.

All bids were reviewed for responsiveness by the Purchasing staff and Southwest CM, LLC was the lowest, responsive bid received.

**ACTION REQUESTED**

The Purchasing Division and the Public Works Department are requesting approval of Agreement No. 2014-0256-PW/PL with Southwest CM, LLC for the construction services for the Ken & Patty Adam Senior/Community Center renovations and addition in the amount of \$1,275,605 exclusive of GRT and request County Manager signature authority on purchase order.

# **AIA**® Document A101™ – 2007

*Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2014

BETWEEN the Owner:

Santa Fe County  
102 Grant Avenue  
PO Box 276  
Santa Fe, NM 87504-0276

and the Contractor:

Southwest CM, LLC  
PO Box 7250  
2404 Bison Springs St. SW  
Albuquerque, NM 87121

for the following Project:

Ken & Patty Adam Senior Center Addition and Renovations, 14 Avenida Torreon, Santa Fe, N.M. 87508

Construct renovations and additions to the Ken & Patty Adam Senior and Community Center. The work consists of renovation of the existing 4,612 square foot center and the construction of an adjoining 3,363 one-level Community Center space. The project shall include new HVAC and electrical systems, expanded fire protection systems, new office, community and restroom spaces, an expanded senior dining area, new finishes (walls, floors and ceilings), new pedestrian entrance, portico and patio, a new parking area and additional associated work.

The Architect:

R2 Architectural Design and Consulting LLC.  
730 San Mateo Blvd. NE  
Suite 1  
Albuquerque, NM 87108

The Owner and Contractor agree as follows.

## **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Work to be performed under this Contract shall commence upon receipt of a written Notice to Proceed by the Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than three hundred ( 300 calendar ) days from the date of commencement.

*(Paragraphs deleted)*

§ 3.4 **Liquidated Damages.** Liquidated damages in the amount of five hundred dollars (\$500.00) shall be assessed per each day that expires after the date of Substantial Completion, as adjusted by any change order, until issuance by the Owner of a certificate of Substantial Completion.

#### **ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Two Hundred Seventy Five Thousand Six Hundred Five Dollars and No Cents (\$ 1,275,605.00) exclusive of NM grt , subject to additions and deductions as provided in the Contract Documents. (Addition and renovation \$ 1,199,605.00; Additive Alternate #1 \$76,000.00).

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

**Additive Alternate #1**

**Paving of parking area.**

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

#### **ARTICLE 5 PAYMENTS**

##### **§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 21st day after the date of the Architect's receipt of the Application for Payment . If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty-one ( 21 ) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the

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various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Intentionally omitted – inapplicable.
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

Intentionally Omitted

*(Paragraphs deleted)*

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 21 days after the issuance of the Architect's final Certificate for Payment.

Paragraph Deleted - Intentionally Omitted

*(Paragraphs deleted)*

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual not a party to this Agreement to serve as Initial Decision Maker.

### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

One and one-half percent (1.5 %) per month

§ 8.3 The Owner's representative:  
*(Name, address and other information)*

Ron Sandoval, Project Manager  
Public Works Department  
Santa Fe County  
102 Grant Avenue  
PO Box 276  
Santa Fe, NM 87504-0276

§ 8.4 The Contractor's representative:  
*(Name, address and other information)*

Anthony Valdez  
Southwest CM, LLC  
PO Box 7250  
Albuquerque, NM 87194

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions

N/A

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:

Exhibit A - PROJECT MANUAL

Section	Title	Date	Pages
---------	-------	------	-------

§ 9.1.5 The Drawings:

Exhibit B - DRAWINGS

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum #1	March 7, 2014	10

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1

.2 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

a. Contractor's non-collusion affidavit

b. Sub-contractor's non-collusion affidavit

c. Contractor's Certification of Equal Employment Opportunity

d. Sub-contractor's Certification of Equal Employment



# ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007. Performance Bond for 100% of contract sum. Payment Bond for 100% of contract sum. Bonds shall be issued by a surety authorized to do business in the State of New Mexico and who is approved in Federal Circular 570 as published by the U.S. Treasury Department.

(Table deleted)

This Agreement entered into as of the day and year first written above.

OWNER SANTA FE COUNTY

Daniel W. Mayfield Chair, Santa Fe County Board  
of County Commissioners.

CONTRACTOR Date

Anthony Valdez owner  
(Printed name and title)

ATTEST

\_\_\_\_\_  
Date  
Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Date: 6/10/14  
Greg Shaffer  
Santa Fe County Attorney

Approved:

\_\_\_\_\_  
Date: 6-17-14  
Katherine Miller  
Santa Fe County Manager

FINANCE DEPARTMENT

\_\_\_\_\_  
Date: 6/16/14  
Teresa C. Martinez  
Santa Fe County Finance Director

Init.



# **AIA**® Document A201™ – 2007

## *General Conditions of the Contract for Construction*

for the following PROJECT:

*(Name and location or address)*

Ken & Patty Adams Senior and Community Center Addition and Renovations  
14 Avenida Torreon  
Santa Fe, NM 87508

### THE OWNER:

*(Name, legal status and address)*

Santa Fe County  
102 Grant Avenue  
Santa Fe, NM 87504

### THE ARCHITECT:

*(Name, legal status and address)*

R2 Architectural Design & Consulting, LLC  
730 San Mateo Blvd. NE  
Suite 1  
Albuquerque, NM 87108

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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User Notes:

1110520387

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

## § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.



### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

##### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount

for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.



§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

### § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment



property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## § 14.2 TERMINATION BY THE OWNER FOR CAUSE

### § 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

## § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

## § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.



**SANTA FE COUNTY'S SUPPLEMENTARY CONDITIONS**  
**TO GENERAL TERMS AND CONDITIONS OF**  
**CONSTRUCTION CONTRACT**

These Supplementary Conditions supplement and amend or modify the Standard General Conditions of the Construction Contract (AIA101-2007) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

A. Order of Preference of Documents, Resolving Discrepancies and Conflicts.

- (1) With respect to matters pertaining to contract management and administration procedures including pay applications and change orders, the provisions of Contract 2014-0256-PW/MS, General Conditions of the Contract for Construction and these Supplementary Conditions of Construction Contract shall govern. In conflicts or discrepancies between these documents, the most restrictive, specific and otherwise most beneficial to the County shall take precedence.
- (2) With respect to matters pertaining to specifications for construction of the Work, including technical requirements and specifications of construction, quality of materials, construction standards and testing the Architect's Technical Specifications and Drawings shall govern.

§ 2.2.1 is deleted in its entirety.

§ 2.4 the following sentence is inserted at the end of this provision:

In exercising the Owner's right to carry out the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods and reasonableness of costs incurred.

§ 3.4.2 is supplemented by inserting the following provision as § 3.4.2.1:

- 3.4.2.1. The Architect with the approval of the Owner may consider a request for substitution of products for those specified by the Contract Documents, including any substitutions permitted by the Addendum. If a substitute results in an a cost increase, the limitation of § 7.3.7 shall govern. In making a request for substitution the Contractor:
  - (i) represents that it has personally investigated the proposed substitute product and has determined that it is equal to or superior in all respects to that specified;
  - (i) represents that the Contractor will provide the same warranty for the substitute product that was required for the specified product;
  - (iii) certifies that the cost data represented is complete and includes all related costs under the Contract Documents including any costs associated

with delays in performance of the Work associated with the substitution and waives all Claims for additional costs related to the substitution that subsequently becomes apparent; and (iv) will coordinate the installation of the approved substitute including making all adjustments in the Work necessitated by the substitution.

§ 7.3.7 is supplemented by inserting the following as § 7.3.7.6:

- .6 The allowance for the combined overhead (general administration overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders and Change Directives to the Owner shall be based on and limited to the percentages on the following schedule:

<u>Entity Performing Work</u>	<u>Value of Work to be performed</u>	
	<u>\$0- \$5,000.00</u>	<u>\$5,000.00 or more</u>
Contractor for work performed by own forces	15%	12%
Contractor for work performed by subcontractor	5%	3%
Subcontractor for work performed by own forces	10%	7%
Subcontractor for work performed by sub-subcontractor	5%	3%

§ 8.1.4 is deleted in its entirety and replaced with:

§ 8.1.4 The term “day” means a calendar day of 24 hours measured from midnight to the next midnight. “Working day” means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather or other forces that may adversely affect the Contractor’s ability to effectively prosecute the Work and the actual Work performed by the Contractor, the Architect will determine (between the end of the day and noon of the next day) if the Owner will charge a “working day.” If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, with the prior approval of the Owner the Architect may charge a working day.

§ 9.3 is supplemented by inserting the following provision as § 9.3.3.1:

§ 9.3.3.1 Contractor shall require all tiers of subcontractors to submit certified weekly payroll records to the Contractor and the Owner (Santa Fe County) biweekly. All tiers of subcontractors shall submit certified weekly payroll records to the Contractor and the County’s Project Manager for this project. The certified weekly payroll records shall be submitted to the Contractor and Ron Sandoval, Project Manager, Santa Fe County Projects and Facilities Management Department, P.O. Box 276, Santa Fe, NM 87504-0276.

§ 9.7 is supplemented by deleting 9.7 in its entirety and replaced it with:

### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within twenty-one (21) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within twenty- one (21) days after the Architect receives the Application for Payment or awarded by binding dispute resolution, the Contractor may upon fifteen (15 ) additional days' written notice to the Owner and the Architect stop the Work until payment of the amount owing has been received. The Contract Time may be extended appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

§ 10.3.3 is deleted in its entirety and replaced with:

§ 10.3.3 Pursuant to § 56-7-1(B) NMSA 1978, Owner shall indemnify and hold harmless the Contractor and Architect, and their agents and employees, against liability, claims, damages, losses or expenses including attorneys fees, arising out of claims under Section 10.3.1 only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Owner or its officers employees or agents.

§ 10.3.6 is supplemented by inserting "To the extent permitted by § 56-7-1(B) NMSA 1978," at the beginning of this sentence.

§ 11.1.1 is supplemented by inserting the following as § 11.1.1.9 and .10 and .11:

.9 The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:

1. Workers' Compensation:
  - a. State: Statutory
  - b. Applicable Federal (e.g. Longshoremen's): Statutory
2. Employer's Liability:
  - \$500,000 per Accident
  - \$500,000 Disease, Policy Limit
  - \$500,000 Disease, Each Employee

.10 The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

- i. \$1,050,000 Each Occurrence
- ii. \$2,100,000 General Aggregate
- iii. \$2,100,000 Personal and Advertising Injury
- iv. \$2,100,000 Products-Completed Operations Aggregate. Products Completed Operations insurance shall be maintained for a minimum period of at least one year after final payment.

The policy shall be endorsed to have the General Aggregate apply to this Project only.

.11 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be \$2,000,000, Each Accident

§ 11.1.4 is supplemented by deleting it in its entirety and replace with:

§ 11.1.4 Contractor shall cause the commercial liability coverage required by the Contract document to include the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligence act or omission during the Contractor's operations and the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 is supplemented by deleting it in its entirety and replace it with:

**§ 11.2 OWNER'S LIABILITY AND PROPERTY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability and property insurance and boiler and machinery insurance.

§ 11.3 through § 11.3.1.4 are deleted in their entirety.

§ 11.3.2 is deleted in its entirety.

§ 11.3.7 is deleted in its entirety and replaced with:

**§ 11.3.7 WAIVER OF SUBROGATION**

Contractor waives all rights against Owner, Owner's officers, employees, agents and consultants for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by Contractor's insurance policies required in Section 11.1, except such rights as Contractor may have to proceeds of such insurance held by the Owner as fiduciary.

§ 13.1 is deleted in its entirety and replace with:

**§ 13.1 GOVERNING LAW**

The Contract shall be governed by the laws of the State of New Mexico and any applicable Ordinances of Santa Fe County, including Ordinance 2014-1 (Establishing a Living Wage).

§ 14.1.3 is supplemented by inserting "consistent with Section 7.3.7.6" between the words "profit" and "costs."

§ 14.3.2 is supplemented by inserting "consistent with Section 7.3.7.6." after the word "profit."

§ 14.4.3 is supplemented by inserting "consistent with Section 7.3.7.6" after the word "profit."

§ 15.1.6 is deleted in its entirety and replace with:

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principle office expenses including compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination in accordance with Section 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages when applicable, in accordance with the Contract Documents.

§ 15.3 through 15.4.4.3 are deleted in their entirety and replace with:

**§ 15.3 DISPUTE RESOLUTION**

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived shall be subject to mediation in conformity with the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, as a condition precedent to binding dispute resolution and before any Claim submitted to the Initial Decision Maker under Section 15.2.5 becomes final and binding. Either party may request mediation and the request shall be submitted in writing to the other party.

§ 15.3.2 Owner and Contractor shall participate in the mediation process in good faith. The process shall be completed within 60 days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the Public Works Mediation Act.

§ 15.3.3 If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.





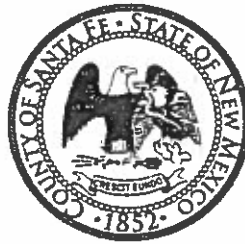




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

DATE: July 8, 2014

TO: Board of County Commissioners

VIA: Katherine Miller, County Manager *KM 7.1.14*

FROM: Rudy Garcia, Legislative Project Coordinator  
Hvtce Miller, Intergovernmental Project Coordinator  
Tony Flores, Assistant County Manager *TF*

RE: 2016 - 2020 Infrastructure Capital Improvement Plan – Implementation Schedule

---

**BACKGROUND and SUMMARY:**

The New Mexico Department of Finance Administration (DFA) has initiated the annual Infrastructure and Capital Improvements Plan (ICIP) process for 2016 - 2020. DFA requires that each local unit of government submit their ICIP to the State by September 1<sup>st</sup>, 2014.

In order to provide the maximum amount of public participation in developing the 2016 - 2020 ICIP, staff is recommending the following public participation schedule:

- **Community Meetings:**
  - Bennie J. Chavez Senior Center – July 16, 2014 11:30 AM
  - Pojoaque Satellite Office – July 16, 2014 7:00PM
  - El Rancho Senior Center – July 22, 2014 11:30AM
  - Nancy Rodriguez Community Center – July 22, 2014 7:00PM
  - Edgewood Senior Center – July 23, 2014 11:30AM
  - Edgewood Town Council Meeting – July 23, 2014 7:00PM
  - El Dorado Senior Center – July 24, 2014 11:30AM
  - Hondo Fire Station (Regional HQ) – July 24, 2014 7:00PM
  - El Dorado Library – July 28, 2014 7:00PM
- **Board of County Commission Meetings:**
  - July 29, 2014 – 1<sup>st</sup> Public Hearing
  - August 12, 2014 – Final Public Hearing and Adoption of ICIP Resolution

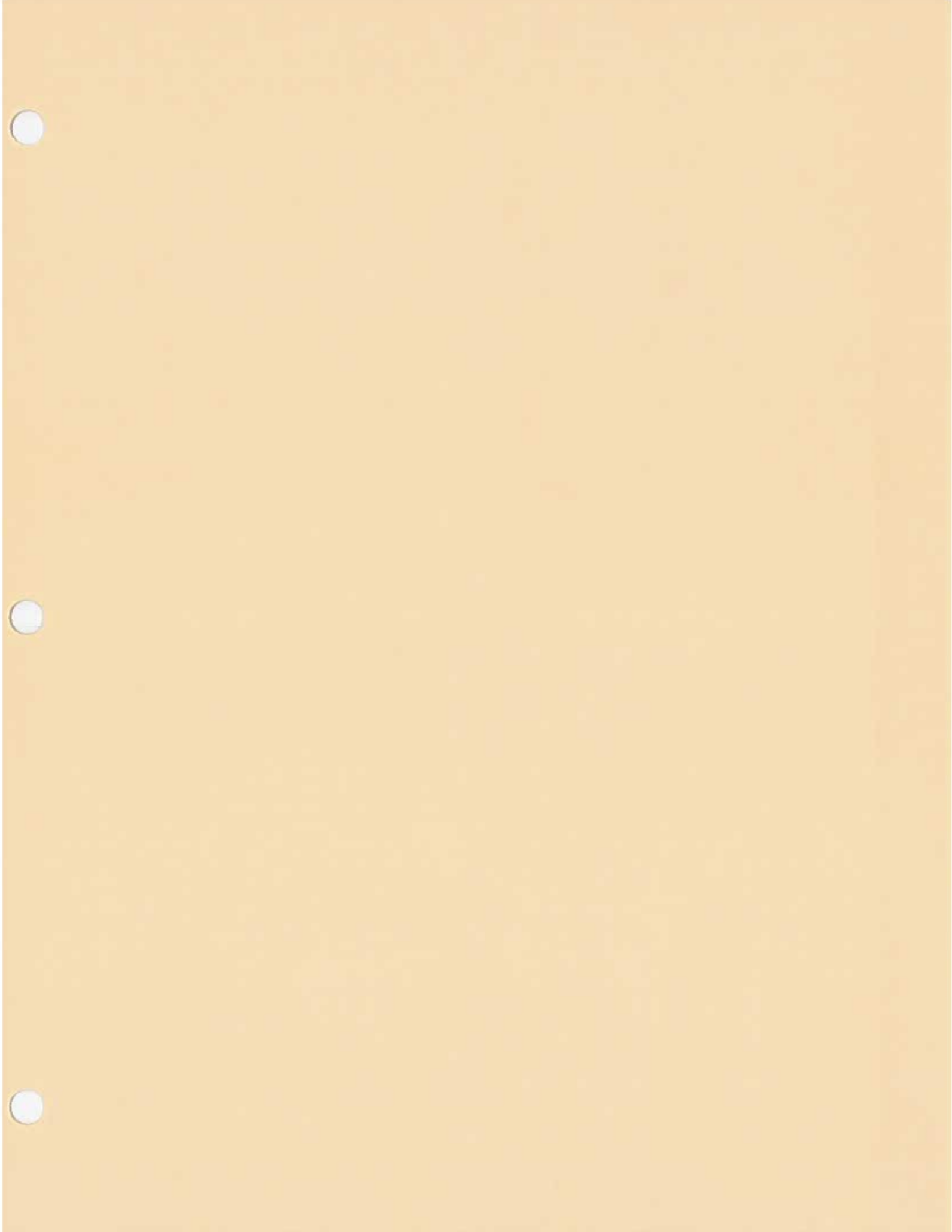


- Individual Commissioner Meetings: one-on-one meetings with Commissioners to identify capital projects - time and location dependent on availability.
- Santa Fe County State Delegation Meetings: one-on-one meetings with delegation members to identify capital projects- time and location dependent on availability.

### **RECCOMENDATION**

Staff is recommending approval of the public participation schedule for the 2016-2020 ICIP.



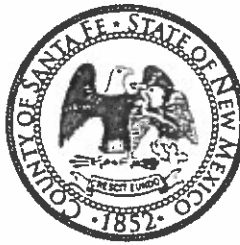




Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: June 25, 2014

TO: Board of County Commissioners

FROM: Adam Leigland, Public Works Director

VIA: Katherine Miller, County Manager

ITEM AND ISSUE: BCC Meeting July 8, 2014

REQUEST APPROVAL OF QUITCLAIM DEED TO SUSAN B. SCHNEIDER PURSUANT TO  
THE PURCHASE AGREEMENT (PUBLIC WORKS/ROBERT MARTINEZ)

---

### SUMMARY:

This quitclaim deed completes the conveyance of County property to Susan B. Schneider as per the purchase agreement.

### BACKGROUND:

Susan B. Schneider is the owner of the residence at 14 Waldo Street, Cerrillos, New Mexico. At the time Ms. Schneider purchased this property, there were existing encroachments on Waldo and Third Streets, which are on County rights-of-way. The encroachments include portions of the residence, garage, fence, sidewalk, adobe wall, propane tank, and landscaping. The BCC approved the purchase agreement with Ms. Schneider at the April 29, 2014, BCC meeting to purchase a total of 932.3 square feet of County right-of-way on Waldo and Third Streets to cure the encroachments.

### ACTION REQUESTED:

Public Works requests approval of the quitclaim deed conveying the property to Susan B. Schneider from Santa Fe County.

Attachments:

1. Purchase Agreement





The Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico ("Grantor"), for consideration paid, quitclaims all of its rights, title, and interest, if any, to **Susan Schneider**, a single woman, whose address is 14 Waldo Street, Cerrillos, Santa Fe County, New Mexico 87501, in the following described real estate in Santa Fe County, New Mexico:

SEE EXHIBIT A-1 THROUGH A-2 ATTACHED HERETO AND INCORPORATED BY  
REFERENCE

SEE EXHIBIT A-1 THROUGH A-2 ATTACHED HERETO AND INCORPORATED BY  
REFERENCE

SUBJECT TO: Patents, reservations, easements, and other matters of record.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**BOARD OF COUNTY COMMISSIONERS  
SANTA FE COUNTY, NEW MEXICO**

By: \_\_\_\_\_  
Name: Daniel Mayfield  
Title: Its Chairman and duly authorized representative

State of New Mexico )  
 ) ss.  
County of Santa Fe )

Subscribed and sworn to me by Daniel Mayfield, Chairman of the Board of County Commissioners Santa Fe County, New Mexico on this \_\_\_\_ day of June, 2014.

Notary Public

**My commission expires:**


Figure 1. A schematic diagram of the experimental design. The subjects were divided into two groups: the control group and the experimental group. The control group received a standard training program, while the experimental group received a modified training program. The subjects were then tested on a series of tasks, and their performance was compared between the two groups.

ATTEST:

---

Geraldine Salazar  
Santa Fe County Clerk

APPROVED AS TO FORM:



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Gregory S. Shaffer  
Santa Fe County Attorney



## EXHIBIT A-2

### Legal Description Area "A"

A tract of land located within the right of way of Third Street and Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County, New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,  
N 48°47'19" W a distance of 978.17 feet to the POINT OF BEGINNING, thence,

N 68°07'35" W a distance of 8.37 feet to a point; thence, N 23°34'22" E a distance of 117.95 feet to a point; thence,  
S 67°44'32" E a distance of 4.97 feet to a point; thence, S 23°34'22" W a distance of 84.85 feet to a point; thence,  
S 66°25'38" E a distance of 3.40 feet to a point; thence, S 23°34'22" W a distance of 32.96 feet to the point of beginning.  
Containing 698.1 square feet or 0.016 acres more or less.

### Legal Description Area "B"

A tract of land located within the right of way of Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County, New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,  
N 42°56'01" W a distance of 1025.57 feet to the POINT OF BEGINNING, thence,

N 66°25'38" W a distance of 50.00 feet to a point; thence, N 23°34'22" E a distance of 4.11 feet to a point; thence,  
S 67°44'32" E a distance of 50.01 feet to a point; thence, S 23°34'22" W a distance of 5.26 feet to the point of beginning. Containing 234.2 square feet or 0.005 acres more or less.



### CERTIFICATE

I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Legal Description was prepared from an Exhibit that represents an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

A handwritten signature of David E. Cooper in black ink, written over a horizontal line.

Title: Exhibit	REV-1	SIERRA LAND SURVEYING, Inc.
14 Waldo Street, Cerrillos, Santa Fe County, New Mexico		1452 South St. Francis Drive Santa Fe New Mexico 505-983-5932 Fax: 505-983-5960 Email: sls@SierraLandSurveys.com
August 27, 2012	Page 2 of 2	

## PURCHASE AND SALE AGREEMENT

29th THIS AGREEMENT FOR PURCHASE AND SALE (the "Agreement"), dated the day of April, 2014, is made and entered into by and between the Board of County Commissioners of Santa Fe County, New Mexico, a political subdivision of the State of New Mexico ("Seller"), and Susan A. Schneider, a single woman ("Buyer").

### Recitals:

- A. Buyer is the owner of 14 Waldo Street, Cerrillos, New Mexico more particularly described as Lots 1 and 2, Block 21, Townsite of Cerrillos, Southeast ¼ of Section 18, T. 14 N., R. 8 E., N.M.P.M. (14 Waldo St.). At the time of Buyer's purchase of 14 Waldo Street improvements made by Buyer's predecessors in title encroached into the County right of way for Third Street and Waldo Street.
- B. Buyer desires to cure the encroachments into the County rights of way and the County is willing to sell the areas of encroachment to Buyer on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, representations and conditions hereinafter set forth, Seller and Buyer agree as follows:

### 1. PURCHASE AND SALE OF THE PROPERTY.

1.1 Purchase and Sale: Seller agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase from Seller the following described property (the Property), Cerrillos, Santa Fe County, New Mexico to wit:

SEE ATTACHED EXHIBIT A

1.2 Purchase Price: As consideration for the conveyance of the Property, Buyer shall pay to Seller Two Thousand Three Hundred and fifty Dollars (\$2,350.00).

### 2. CLOSING DATE.

Unless otherwise extended by written agreement of the parties, the Closing Date shall be no more than thirty (30) days following the approvals, authorizations and consents that are required of Seller that enables consummation of the transactions contemplated by this Agreement, and provided all conditions precedent have been fulfilled.

### 3. REVIEW, INSPECTION, TITLE AND SURVEY.

Buyer acknowledges that she has been given the opportunity to inspect the Property and review title documents and surveys of the Property. Buyer further acknowledges that the Property is being sold "as is, where is" with no warranties or representations except as expressly

provided in this Agreement. Buyer acknowledges and agrees that the Seller has not made, does not make and specifically negates any representations, agreements, or guarantees, express, implied, oral or written, with respect to the compliance by the Property with any laws, rules, ordinances or regulations (including environmental laws), or the state of repair of the Property. Buyer's acknowledgements as set forth in this paragraph shall survive closing.

#### **4. CONDITIONS PRECEDENT TO THE BUYER'S OBLIGATIONS**

Buyer's obligation to purchase the Property is conditioned upon satisfaction (or waiver in writing by Buyer) of each of the following conditions:

4.1 This purchase shall be subject to Buyer's approval or disapproval of any inspection, title insurance product, survey or any other document related to the Property, in Buyer's sole and absolute discretion, until the date of the closing. Buyer shall provide written notice of disapproval to Seller on or before the closing date. In the event Buyer provides written notice of disapproval to Seller, this Agreement shall be deemed terminated and the parties shall be relieved of any further obligations to each other with respect to the purchase and sale of the Property.

4.2 Seller shall have delivered to Buyer, a quitclaim deed, duly executed by the Seller.

#### **5. CONDITIONS PRECEDENT TO THE SELLER'S OBLIGATIONS**

Seller's obligation to sell the Property to Buyer is condition upon satisfaction (or waiver in writing by Seller) of each of the following conditions:

5.1 Seller shall have obtained the written approval of this transaction from every regulatory agency of federal, state or local government that may be required in the opinion of Seller, including if necessary the State of New Mexico Board of Finance.

5.2 Buyer shall deliver (or cause to be delivered) to Seller, a transfer of immediately available funds in an amount equal to the Purchase Price to such account (or accounts) as shall be designated by Seller and all other funds and documents required of Buyer to comply with her obligations hereunder.

#### **6. TERMINATION**

This Agreement may be terminated prior to the Closing Date only as follows and in each case only by written notice:

- a) By the mutual written consent of Seller and Buyer;
- b) By either Seller or Buyer, if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its/her

obligations under this Agreement) on or before the first (1<sup>st</sup>) anniversary of the date of this Agreement, or such later date as the parties may agree upon;\_

- c) Buyer's disapproval of any inspection, title insurance product, survey or any other document related to the Property, in Buyer's sole and absolute discretion;
- d) By either Seller or Buyer, if a material breach of any covenant, warranty, representation, agreement or provision of the this Agreement, that individually or in the aggregate could have a material adverse effect, has been committed by the other party and such breach has not been (i) cured within thirty (30) days after the non-breaching party gives written notice of said breach to the breaching party; or, (ii) waived by the non-breaching party.

## **7. COSTS**

7.1 Buyer shall pay all of the escrow fees, if any, all of the cost of all recording fees, all of the costs associated with title insurance and surveys and the cost of any other obligations of Buyer hereunder.

7.2 Seller represents that Seller is exempt from the payment of ad valorem taxes on the property and that Seller has not entered into any rental agreements, or caused fuel oil charges, water charges, sewer charges, and current common charges or assessments to be imposed on the Property.

7.3 Buyer shall pay any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, rent payments, fuel oil charges on the property, water charges, sewer charges, and current common charges or assessments which would be the responsibility of Buyer as the assessed owner of the Property.

7.4 Seller shall cause to be paid to Travis Engelage, MAI all costs and expenses owed as a result of the Appraisal prepared for Seller dated February 5, 2014 from the funds previously collected from Buyer.

## **8. LIABILITY**

Any liability incurred by Seller in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, §41-4-1 et seq., as amended.

## **9. BROKER FEES AND INDEMNIFICATION**

9.1 Brokers: Buyer and Seller mutually represent that there are no brokers involved in this transaction to whom a fee may be owed. If a party is alleged to have used a real estate broker, that party shall pay the brokerage fee and any incidental or consequential damages caused thereby.

9.2 Other Indemnities. Buyer agrees to indemnify and hold Seller harmless from any claims of third parties, for occurrences arising prior to Closing, from the encroachment of the improvements on Lot 1 and 2 of Block 21 into the public right of way for Waldo Street and Third Street, Cerrillos, New Mexico, as shown on Exhibit A hereto.

#### 10. INCORPORATION OF EXHIBITS.

All exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

#### 11. NOTICES.

All notices, requests, demands and other communications given, or required to be given, hereunder shall be in writing and shall be given (a) by personal delivery with a receipted copy of such delivery, (b) by certified or registered United States mail, return receipt requested, postage prepaid, or (c) by facsimile transmission with an original mailed by first class mail, postage prepaid, to the following addresses:

If to Seller: The County of Santa Fe  
102 Grant Ave. P.O. Box 276  
Santa Fe, NM 87504-0276  
Attn: Stephen Ross  
Telephone: 505-986-6279 Facsimile: 505-986-6362

If to Buyer: Susan A. Schneider  
14 Waldo Street  
Cerrillos, NM, 87010

With a copy to: Charlotte H.; Hetherington

Cuddy & McCarthy, LLP

P.O. Box 4160

Santa Fe, NM 87505-4160

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon delivery to the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Any party may change its/her address for purposes of this paragraph by giving notice to the other party.



**12. ASSIGNMENT.**

This Agreement shall be binding upon the parties hereto and their respective heirs, successors or representatives; provided, however, that this Agreement may not be assigned by either party without the prior express written consent of the other party.

**13. ENTIRE AGREEMENT.**

This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose.

**14. WAIVER.**

Failure of either party at any time or times to require performance of any of the provisions of this Agreement shall in no way affect its right to enforce the same, and a waiver by either party of any breach of any of the provisions of this Agreement shall not be construed to be a waiver by such party of any prior or succeeding breach of such provision or a waiver by such party of any breach of any other provision.

**15. HEADINGS AND CONSTRUCTION.**

The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with herein. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities contained herein against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this document.

**16. COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the parties only when a copy or a counterpart has been signed by each party and delivered to each other party. Signatures, copies and counterparts may be transmitted by mail or overnight courier service and when so transmitted are as effective as if a manually signed, original document had been delivered.

**17. APPLICABLE LAW, JURISDICTION AND VENUE.**

This Agreement shall, in all respects, be governed by and construed according to the laws of the State of New Mexico applicable to agreements executed and to be wholly performed therein. Venue shall be in the First Judicial District, County of Santa Fe, New Mexico.

**18. FURTHER DOCUMENTS.**

Each of the parties hereto shall, on and after the Closing Date, execute and deliver any and all additional papers, documents, instructions, assignments and other instruments, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the parties hereto.

**19. SEVERABILITY.**

Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision hereof which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and all other provisions hereof shall remain in full force and effect.

**20. NO OBLIGATION TO THIRD PARTIES; NO FIDUCIARY RELATIONSHIP OR DUTIES.**

The negotiation, execution, delivery and performance of this Agreement shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, to obligate either of the parties hereto to any person or entity other than each other, or to create any agency, partnership, joint venture, trustee or other fiduciary relationship or fiduciary duties between Seller and Buyer.

**21. CONSTRUCTION.**

For all purposes of interpretation or construction of this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter shall include the masculine and feminine. As used in this Agreement, the term "and/or" means one or the other or both, or anyone or all, or any combination of the things or persons in connection with which the words are used; the term "person" includes individuals, partnerships, limited liability companies, corporations and other entities of any kind or nature; the terms "herein," "hereof" and "hereunder" refer to this Agreement in its entirety and are not limited to any specific provisions; and the term "including" means including, without any implied limitation.

**22. DATES OF PERFORMANCE.**

If under this Agreement the date upon which an event is scheduled to occur or the last date on which a party's performance of any obligation is required falls on a non-business day, then such date shall be deemed to be the immediately following business day.

**23. TIME IS OF THE ESSENCE.**

Time is of the essence hereof and of all the terms, provisions, covenants and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**SELLER**

SANTA FE COUNTY

By: *Daniel W. Mayfield*

Daniel W. Mayfield, Chair  
Board of County Commissioners

Date: 4/29/14

ATTEST

*Geraldine Salazar*  
Geraldine Salazar, Santa Fe County Clerk

Date: 4-29-2014

**APPROVED AS TO FORM**

*Stephen C. Ross*  
Stephen C. Ross, Santa Fe County Attorney

Date: 4-3-14

**BUYER**

*Susan A. Schneider*  
Susan A. Schneider

Date: March 17, 2014



NORTH

SCALE: 1" = 30'

FEET: 0 30

SCALE: 

## NOTES

**Basis** for this Exhibit taken from a plat entitled "Boundary Survey Plat for Fidelity National Title Group, Inc." Lands of Alice M. Messina, Trustees on Lots 1 and 2, of Block 21 Townsite of Cerrillos Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M. Cerrillos, Santa Fe County, New Mexico 14 Waldo Street recorded in Plat Book 715, page 033 as Instrument No. 1,595,986 records of Santa Fe County, New Mexico

Reference plat: Townsite of Carrillos as recorded  
in Plat Book 20, page 47 and Plat Book 55,  
Page 038 as Document No. 406,555.



## CERTIFICATE

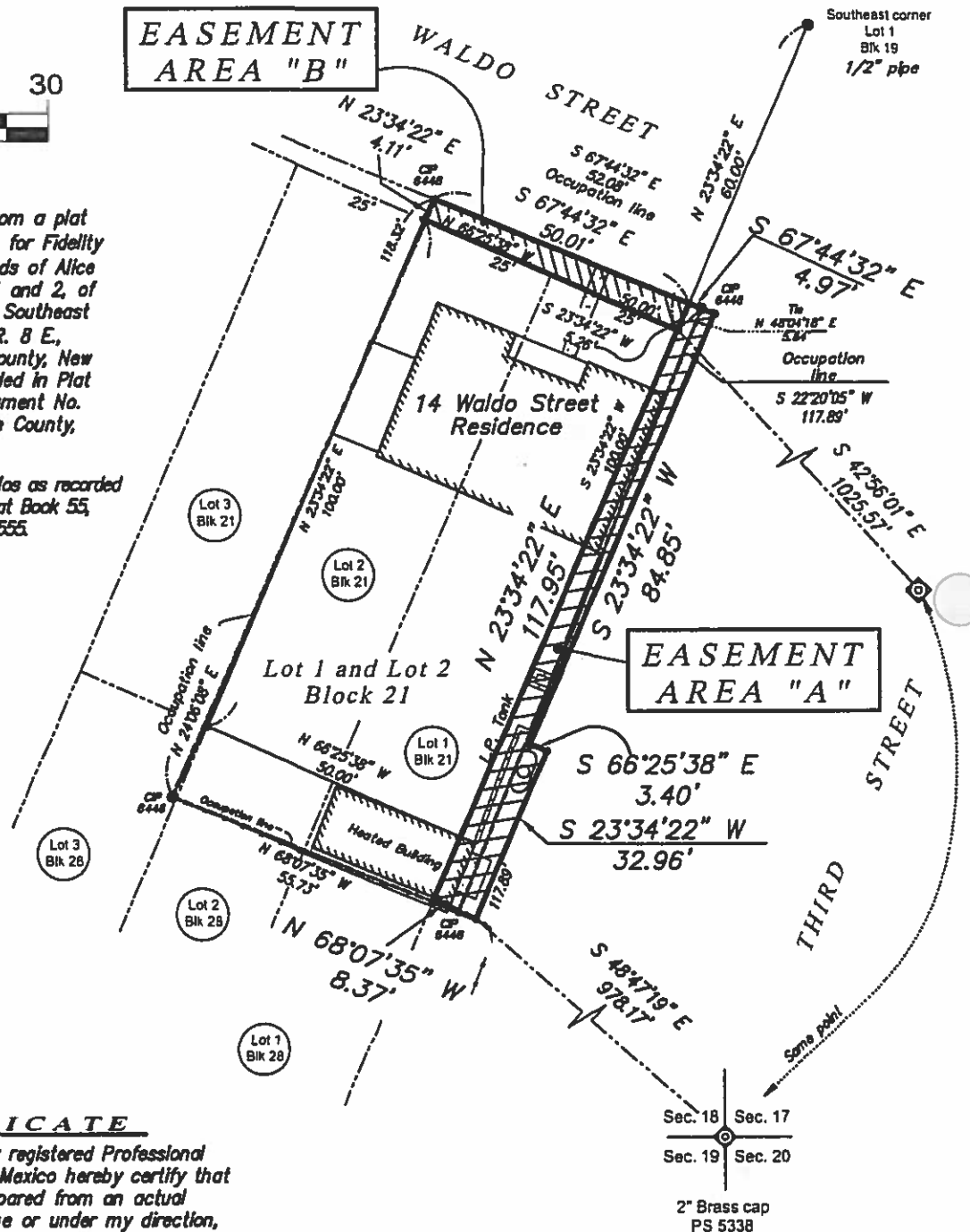
I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Easement Exhibit was prepared from an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

FOR REVIEW

## *Easement Exhibit*

*Within Third Street and Waldo Street,  
Townsite of Cerrillos*

**Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M.  
Cerrillos, Santa Fe County New Mexico**



**Title:** *Easement Exhibit*

14 Waldo Street, Cerrillos,  
Santa Fe County, New Mexico

August 27, 2012

Page 1 of 2

**SIERRA LAND SURVEYING, Inc.**  
1452 South St. Francis Drive  
Santa Fe New Mexico  
505-983-5932 Fax: 505-983-5960  
Email: [sls@SierraLandSurveys.com](mailto:sls@SierraLandSurveys.com)

Legal Description Area "A"

A tract of land located within the right of way of Third Street and Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County, New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,  
N 48°47'19" W a distance of 978.17 feet to the POINT OF BEGINNING, thence,

N 68°07'35" W a distance of 8.37 feet to a point; thence, N 23°34'22" E a distance of 117.95 feet to a point; thence,  
S 67°44'32" E a distance of 4.97 feet to a point; thence, S 23°34'22" W a distance of 84.85 feet to a point; thence,  
S 66°25'38" E a distance of 3.40 feet to a point; thence, S 23°34'22" W a distance of 32.96 feet to the point of beginning.  
Containing 698.1 square feet or 0.016 acres more or less.

Legal Description Area "B"

A tract of land located within the right of way of Waldo Street, Townsite of Cerrillos within the Southeast 1/4 of Section 18, T. 14 N., R. 8 E., N.M.P.M, Santa Fe County, New Mexico and being further described as follows;

COMMENCING at a 2" brass cap marking the southeast corner of Section 18, T. 14 N., R. 8 E., N.M.P.M. thence,  
N 42°56'01" W a distance of 1025.57 feet to the POINT OF BEGINNING, thence,

N 66°25'38" W a distance of 50.00 feet to a point; thence, N 23°34'22" E a distance of 4.11 feet to a point; thence,  
S 67°44'32" E a distance of 50.01 feet to a point; thence, S 23°34'22" W a distance of 5.26 feet to the point of beginning. Containing 234.2 square feet or 0.005 acres more or less.



STATE OF NEW MEXICO  
COUNTY OF SANTA FE

This instrument was acknowledged before me on this  
\_\_\_\_\_ day of \_\_\_\_\_ 2012

by: David E. Cooper

Notary Public

My Commission expires \_\_\_\_\_

**CERTIFICATE**

I, David E. Cooper, a duly registered Professional Surveyor in the State of New Mexico hereby certify that this Legal Description was prepared from an Easement Exhibit that represents an actual survey made in the field by me or under my direction, that it meets the Minimum Standards for Surveys in New Mexico and that the information contained herein is true and correct to the best of my knowledge, information and belief.

**FOR REVIEW**

Title: Easement Exhibit

14 Waldo Street, Cerrillos,  
Santa Fe County, New Mexico

August 27, 2012

Page 1 of 2

SIERRA LAND SURVEYING, Inc.  
1452 South St. Francis Drive  
Santa Fe New Mexico  
505-983-5932 Fax: 505-983-5960  
Email: [sls@SierraLandSurveys.com](mailto:sls@SierraLandSurveys.com)









#### **IV. Matters of Public Concern**







**V. Discussion/Information Items/  
Presentations**

**A. Presentations**

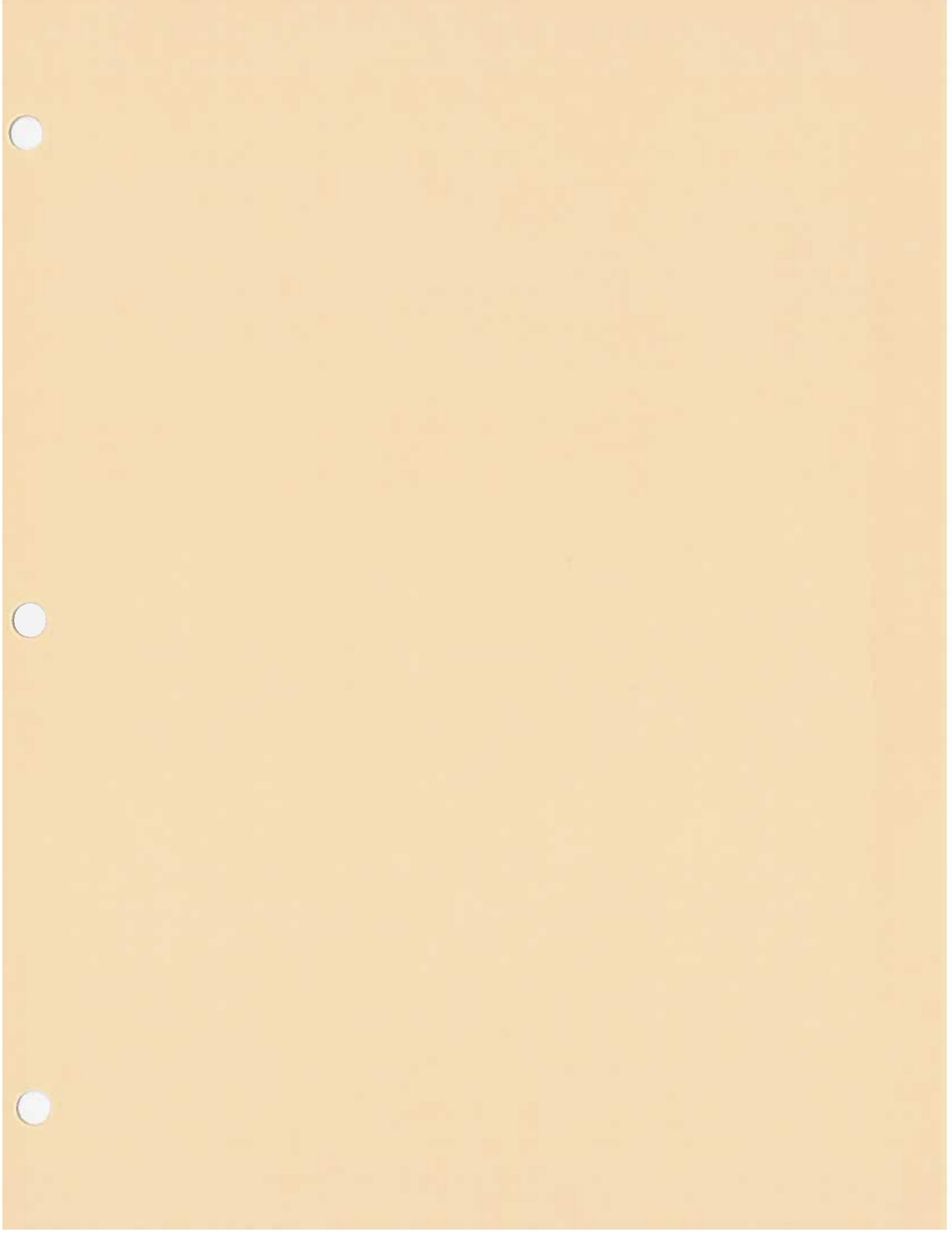
**B. Matters From The Commission**

**1. Commissioner Issues and  
Comments**

**C. Matters From The County  
Manager**

**1. Miscellaneous Updates**









## **VI. Matters From County Attorney**

### **A. Executive Session**



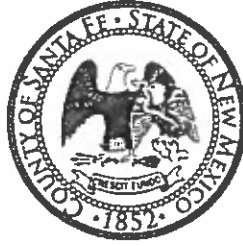




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**DATE:** June 20, 2014

**TO:** Board of County Commissioners

**FROM:** Miguel "Mike" Romero, Senior Development Review Specialist *(MR)*

**VIA:** Katherine Miller, County Manager *KM 7.1.14*  
Penny Ellis-Green, Growth management Director  
Vicki Lucero, Building and Development Services Manager *VL*  
Wayne Dalton, Building and Development Services Supervisor *WD*

**FILE REF: CDRC CASE # V 14-5080 Jason Mohamed Variance**

**ISSUE:**

Jason Mohamed, Applicant, Kristofer C. Knutson (Knutson Law P.C.), Agent, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 2.5 Acres.

The property is located at 11 Virginia Lane, Within Section 24, Township 15 North, Range 8 East (Commission District 5).

**Summary:**

The Applicants agent is requesting to table this case scheduled for July 8, 2014, due to the fact that he is out of the country and is unable to represent his client.





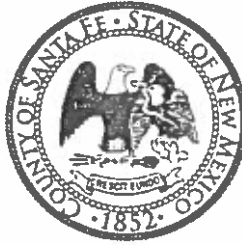




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**DATE:** June 24, 2014

**TO:** Board of County Commissioners

**FROM:** Jose E. Larrañaga, Development Review Team Leader

**VIA:** Katherine Miller, County Manager *km 7.1.14*  
Penny Ellis-Green, Growth Management Director  
Vicki Lucero, Building and Development Services Manager *VL*  
Wayne Dalton, Building and Development Services Supervisor *WD*

**FILE REF.:** CDRC CASE # V/FDP 14-5090 Stanley Cyclone Center

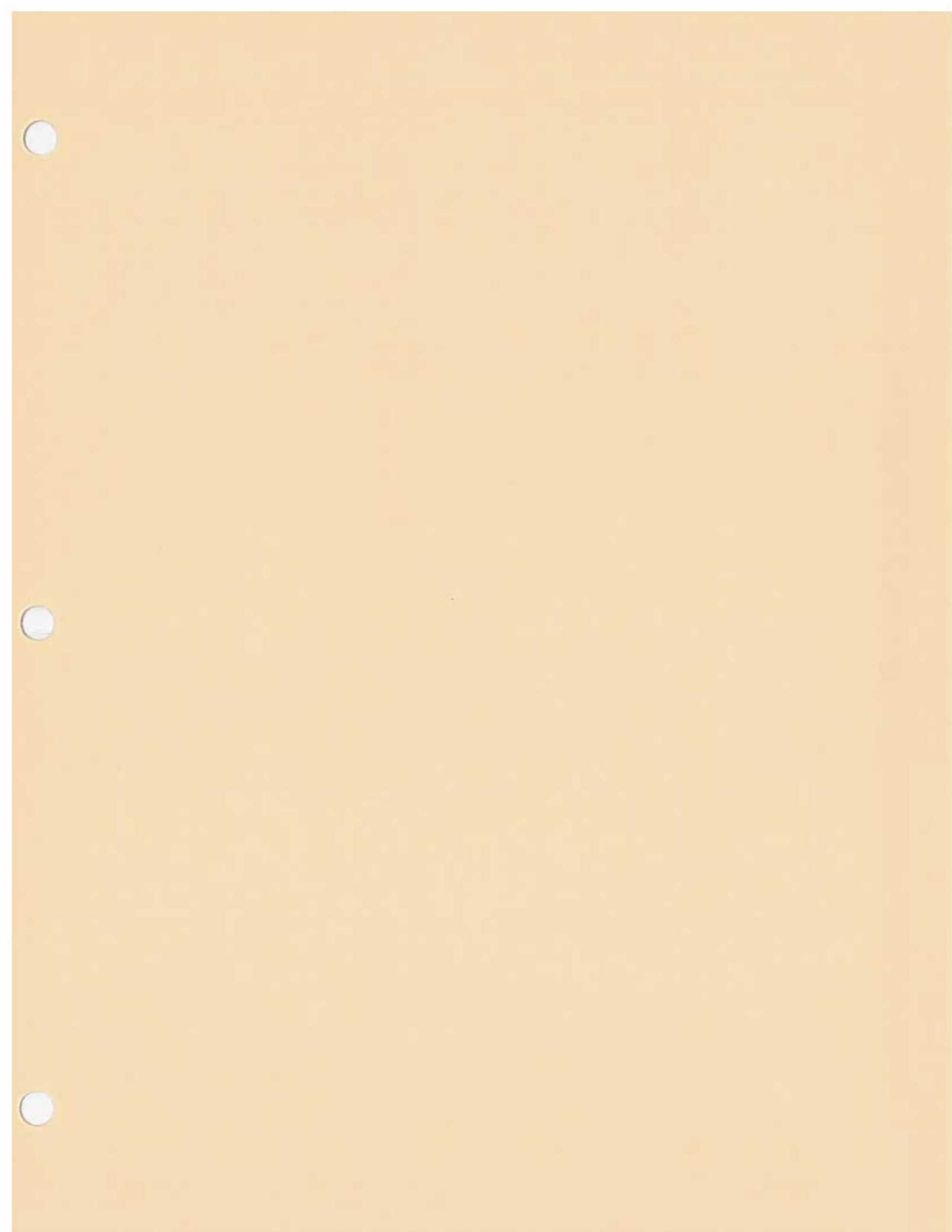
**ISSUE:**

Santa Fe County, Applicant, Lorn Tryk (Lorn Tryk Architects), Agent, request Final Development Plan approval to allow a 51,250 square foot structure, to be utilized as an event center for equestrian events, on 11 acres  $\pm$ . The Applicants request also includes a variance of Article III, Section 2.3.6 (Height Restrictions) to allow the proposed structure to exceed 24 feet in height and a variance of Article III, Section 4.4.4.f (Landscaping) of the Land Development Code. The property is located at 22 West Kinsell Avenue, in Stanley, within Sections 27 & 28, Township 11 North, Range 9 East, (Commission District 3).

**SUMMARY:**

This case is being tabled at the request of the Applicant.







Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

**DATE:** June 24, 2014

**TO:** Board of County Commissioners

**FROM:** Jose E. Larrañaga, Development Review Team Leader

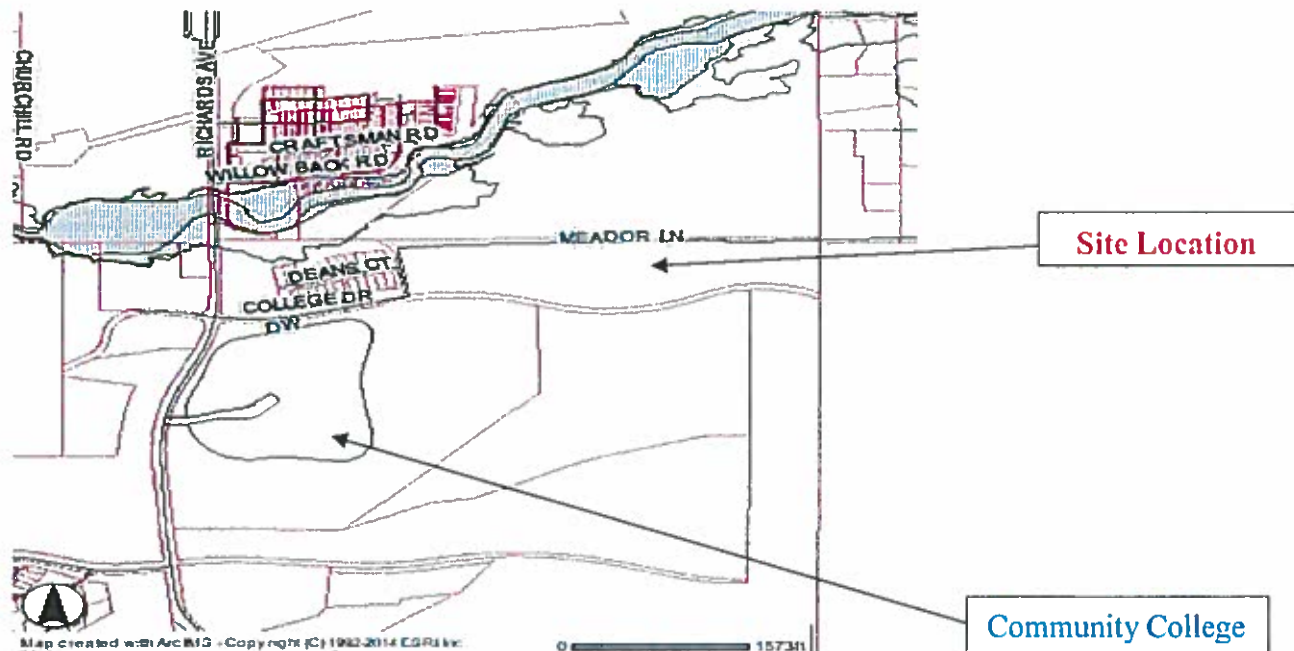
**VIA:** Katherine Miller, County Manager  
Penny Ellis-Green, Land Use Administrator  
Vicki Lucero, Building and Development Services Manager  
Wayne Dalton, Building and Development Services Supervisor

**FILE REF.:** CDRC CASE # Z 13-5380 Elevation

**ISSUE:**

Vedura Residential Operating, LLC, Applicant, JenkinsGavin, Agents, request Master Plan approval in conformance with the Community College District Ordinance to allow a multi-family residential community consisting of 214 residential units on 22 ± acres. The site is located on the north side of College Drive and east of Burnt Water Road within the Community College District, within Section 21, Township 16 North, Range 9 East (Commission District 5).

**Vicinity Map:**





## SUMMARY:

On May 15, 2014, the County Development Review Committee (CDRC) met and acted on this case, the decision of the CDRC was to recommend denial of the Applicant's request.

This case was on the March 20, 2014, CDRC Agenda as a Master Plan Amendment to the College North Master Plan. This case was tabled from the Agenda at the request of the Applicant. During the review process staff determined that the College North Master Plan had expired. The College North Master Plan, which allowed for 73 single family lots on 90.75 acres, was approved by the Extraterritorial Zoning Authority (EZA) in 1997 and Phase I of the Master Plan was developed in 1999 as a 20 lot subdivision known as the College Heights Subdivision on 33.84 ± acres.

Article V, § 5.2.7 Expiration of Master Plan states: "approval of a master plan shall be considered valid for a period of five years from the date of approval by the Board; Master Plan approvals may be renewed and extended for additional two year periods by the Board at the request of the developer; progress in the planning or development of the project approved in the master plan consistent with the approved phasing schedule shall constitute an automatic renewal of the master plan approval. For the purpose of this Section, "progress" means the approval of preliminary or final development plans, or preliminary or final subdivision plats for any phase of the master planned project".

The Applicant is requesting Master Plan approval in conformance with the Community College District Ordinance (CCDO). The Community College District Ordinance was adopted on December 11, 2000. The CCDO Land Use Zoning Map designates this site as a Village Zone within a New Community Center which allows for multifamily residential use. The Master Plan would allow a 214 unit multifamily residential apartment community on a 22 ± acre site, which is defined as an eligible use in the CCDO Land Use Table (Exhibit 10). Density allowed in this area is a minimum of 3.5 dwelling units per acre. The Applicant is proposing approximately 9.7 dwelling units per acre and is in conformance with the CCDO.

The Applicant has refined their plans to relocate the proposed site of the apartments in accordance with the alignment of the proposed Southeast connector. The exact alignment of the Southeast Connector has not been established therefore the actual building site of the apartments may change to coincide with the alignment once it is finalized by the County.

Article V, § 5.2.1.b states: "a Master Plan is comprehensive in establishing the scope of a project, yet is less detailed than a Development Plan. It provides a means for the County Development Review Committee and the Board to review projects and the sub-divider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a Preliminary and Final Plat approval".

This Application was submitted on December 6, 2013 and revised on March 26, 2014.

Building and Development Services staff have reviewed this project for compliance with pertinent Code requirements and have found that the facts presented support this request: the Application is comprehensive in establishing the scope of the project; the Master Plan conforms to the eligible use and density allowed under a New Community Center; the Application satisfies the submittal requirements set forth in the Land Development Code.

The review comments from State Agencies and County staff have established findings that this Application is in compliance with state requirements, County Ordinance No. 2000-12 Community College District and Article V, § 5, Master Plan Procedures of the Land Development Code.

**APPROVAL SOUGHT:** Master Plan in conformance with the Community College District Ordinance to allow a multi-family residential community consisting of 214 residential units on 22 ± acres.

**GROWTH MANAGEMENT AREA:** Community College District, Community District.

**ZONE:** Village Zone within a New Community Center District.

**ARCHAEOLOGIC:** An archaeological site was documented on this site in 1995. This site is eligible for listing in the National Register of Historic Places and the State Register of Cultural Properties. A cultural resources re-survey has been submitted for review. The Historic Preservation Division (HPD) reviewed the archaeological site assessment prepared by Ron Winters and states "as long as the non-disturbance easement remains in place for LA 110168, the proposed subdivision will not impact significant or cultural sites".

**ACCESS AND TRAFFIC:** The site will access directly off College Drive. A Traffic Impact Analysis was submitted and reviewed by the County Public Works Department. Public Works supports this project subject to the following conditions: the Southeast Connector will operate as a Minor Arterial Roadway, therefore, no direct access unto the Southeast Connector will be allowed; should the project Elevation be constructed prior to the Southeast Connector being constructed the Applicant shall be responsible for the construction of College Drive from the existing termini of Burnt Water Road; should the project Elevation be constructed prior to the Southeast Connector being constructed the Applicant shall conduct a Traffic Analysis, using the data provided for the slip lane on Richards Avenue, to determine the amount of apartment units which can be approved without causing an unacceptable level of service on the Richards/College Drive Roundabout; the Applicants shall submit a Traffic Impact



Analysis once traffic data for the location study, of the Southeast Connector, becomes publically available to determine if any off-site improvements are warranted; a traffic circle may be required at the intersection of College Drive and the Southeast Connector which would require a 105' radius from the intersections center line (the proposed plans depict a 100' set back from the structure to edge of R-O-W of the proposed Southeast Connector); a left turn deceleration lane shall be installed at the main driveway of the development ( Exhibit 3, pg. NBD-38).

**FIRE PROTECTION:**

La Cienega Fire District: Santa Fe County will provide the water source for fire protection; fire hydrants will be located within the site; Cul-de-sacs shall be a minimum 50' radius.

**WATER SUPPLY:**

The project will be served by the County Water Utility. A 12" water line will be constructed to serve the development which will connect to a master meter that is connected to a 16" main line on Richards Avenue. A water utilities service availability analysis was issued to the Applicants by the Santa Fe County Utilities Department.

**LIQUID WASTE:**

The project will be served by the Ranchland Utility Company. The application was reviewed by NMED, Ground Water Quality Bureau who determined that the proposal will fit within the current conditions of Rancho Viejo's Ground Water Discharge Permit and no further permitting is required.

**SOLID WASTE:**

The apartments will have a series of dumpsters that will be screened and gated. Weekly collection of waste will be contracted with a local waste collection company.

**FLOODPLAIN &  
TERRAIN MANAGEMENT:**

The site has 0-20% percent slopes with minor 15%-30% isolated occurrences. The property is not located within a designated FEMA 100 Year flood zone according to FIRM Community Panel No. 35049c0526E dated December 4, 2012, which shows that the property is located in Zone X.

The Applicant's proposal shows existing topography, natural drainage, and proposed locations for ponding. The Application meets Master Plan requirements of the Santa Fe County Land Development Code, Ordinance No. 2000-12 Community College District, and Ordinance 2008-10 Flood Damage Prevention and Stormwater Management Ordinance.

DBA-4

**SIGNAGE AND LIGHTING:** The Applicants have submitted a conceptual signage plan showing two Monument Signs at the entrance of the development. As per Article VIII, Section 7.13, only one permanent identification sign shall be permitted and sign area shall not exceed 20 square feet in size. The Applicant shall comply with all signage requirements within Article VIII, (Sign Regulations) at time of Development Plan Submittal. The signage element of this Application does not comply with Article V, Section 5 (Master Plan Procedures).

The Applicants have submitted a conceptual lighting plan showing pole mounted lights at 25 feet in height. All pole mounted lighting shall not exceed 24 feet in height. All lighting within the CCD shall be shielded. The Applicant shall comply with all outdoor lighting requirements within Article VIII, Section 4.4.4.h at time of Development Plan submittal. The lighting element of this Application does not comply with Article V, Section 5 (Master Plan Procedures).

**EXISTING DEVELOPMENT:** The project site is currently vacant.

**ADJACENT PROPERTY:** The site is bordered to the west by the College Heights Subdivision. The Community College and vacant property owned by the Community College borders College Drive to the south. The site is bordered to the north and east by vacant residential parcels.

**OPEN SPACE:** The proposal meets the requirements set forth in the Land Development Code and Ordinance 2000-12 (Community College District), for Open Space and Trails, including minimum 50% open space and accommodation of planned district trails running E-W along College Drive and NW-SE along a utility easement on the eastern end of the property.

**AGENCY REVIEW:**

<u>Agency</u>	<u>Recommendation</u>
County Fire	Approval with Conditions
County Utilities	Approval
NMDOT	Approval
Open Space	Approval
Public Works	Approval with Conditions
OSE	No Opinion on Master Plans
SHPO	Approval
NMED	Approval
Public Schools	Approval

**STAFF RECOMMENDATION:** Conditional approval for a Master Plan in conformance with the Community College District Ordinance to allow a multi-family residential community consisting of 214 residential units on 22 ± acres subject to the following conditions:

1. The Applicants shall comply with all review agency comments and conditions, as per Article V, § 7.1.3.c. **Conditions shall be noted on the recorded Master Plan.**
2. Master Plan with appropriate signatures shall be recorded with the County Clerk, as per Article V, § 5.2.5.
3. A revised Traffic Impact Analysis, showing current road conditions, shall be submitted based on the Southeast Connector at Preliminary Development Plan. **Article III, § 4.4.1.5.c**

**EXHIBITS:**

1. Master Plan Report
2. Proposed Plans
3. Reviewing Agency Responses
4. Letter from County Utilities
5. Aerial Photo of Site
6. Letter from Ranch Land Utility Co.
7. Article V, § 5.2.6.b Expiration of Master Plan
8. Article V, § 5.3.6 Expiration of Preliminary Plat
9. Article V, § 5.2.1.b Master Plan Procedure
10. Article V, § 5.2.5 Filing Approved Master Plan
11. CCD Land Use Table
12. CCD Land Use Zoning Map
13. Article III, § 4.4.1.5.c Traffic Generation Report
14. Preferred Alignment of the Southeast Connector
15. Declaration of De-Annexation
16. Declaration of Covenants and Restrictions
17. April 17th CDRC Minutes
18. May 15<sup>th</sup> CDRC Minutes
19. Letters of Concern

DBA-6



**jenkinsgavin**  
DESIGN & DEVELOPMENT INC

March 26, 2014

Jose Larrañaga, Commercial Development Case Manager  
Santa Fe County Development Services  
102 Grant Avenue  
Santa Fe, NM 87501

**RE: Elevation Multi-Family Community  
Master Plan Application**

Dear Jose:

This letter is respectfully submitted on behalf of Vedula Residential Operating, LLC in application for Master Plan approval for a 214-unit multi-family community on  $\pm 22.0$  acres. The subject property is part of a 56.91-acre parcel located north of College Drive and east of Burnt Water Road in a New Community Center Village Zone of the Community College District.

### **Background Summary**

The subject property was part of "Future Phases 2 & 3" of the 1997 College North Master Plan in Rancho Viejo, which contemplated 73 single family lots on 90.75 acres. The subdivision plat for Phase 1 of the Master Plan, the 20-lot College Heights Subdivision, was approved in 1998. In accordance with Article V, Section 5.2.7 of the County Land Development Code, the Master Plan has expired since no additional plats were approved subsequent to Phase 1.

### **Master Plan**

A 214-unit apartment community is proposed for the subject property. Originally, the Project was proposed adjacent to Burnt Water Road and the existing College Heights Subdivision. However, in response to neighbor concerns expressed at our first two community meetings, the Project was relocated significantly eastward to provide a large buffer and transition between College Heights and the proposed apartments. Furthermore, as reflected in the attached plans, the Project is now even further east and sited on the east side of the proposed right-of-way for the SE Connector roadway. Consequently, the apartments are now 0.26 miles east of the College Heights Subdivision. This siting revision was explained to the neighborhood at a follow-up community meeting on March 10, 2014. A subdivision plat will be prepared that dedicates the right-of-way for the SE Connector and creates the  $\pm 22.0$ -acre subject tract for the apartment development.



## Access & Traffic

The Project will be accessed via two driveways connecting to a new extension of College Drive. In addition, a gated entrance is proposed from the new SE Connector. Per our discussions with the County Public Works Department, the portion of College Drive from its current terminus at Burnt Water to the future SE Connector will be constructed by the County as part of the SE Connector project. The section of College Drive from the SE Connector to the east end of the apartments will be constructed by the applicant as part of the Elevation project. A Traffic Impact Analysis ("TIA") was prepared by CKS LLC and is submitted with this application. The conclusions are summarized below:

- The Project's proposed access points on College Drive should be designed and constructed as un-signalized intersections. A left-turn deceleration lane will be required on College Drive at the central main driveway.
- The intersections of Richards Avenue/Dinosaur Trail and Richards Avenue/Avenida del Sur currently operate at acceptable levels of service during peak periods, and will continue to do so in the future. No further improvements to these two intersections are warranted.
- The intersections at Richards Avenue/Willowback Road and Richards Avenue/College Drive currently experience delay, or will in the future, during peak periods whether or not the Project is implemented.
- The roundabout at Richards Avenue/Willow Back Road currently operates at acceptable levels of service, but will experience delay in the future, whether or not the Project is implemented. If a second southbound through lane for Richards traffic were added, the intersection would operate at acceptable levels of service with or without the Project.
- The roundabout at Richards Avenue/College Drive currently experiences delay and will continue to do so in the future, whether or not the Project is implemented. If the existing single-lane roundabout were converted to two lanes, the intersection would operate at acceptable levels of service, with or without the Project.

The NE/SE Connector Location Study is currently underway to determine the future location of the Southeast Connector. The SE Connector is intended to provide relief to Richards Avenue, but as the study is not complete, the extent of the impact is not yet known. However, the construction of the SE Connector is likely to produce acceptable levels of service on Richards Avenue and therefore render the above referenced improvements unnecessary. Once the County's traffic data becomes publicly available, we will review it to determine if any off-site improvements are warranted and will update the TIA accordingly.

In conjunction with development of the apartment community, Rancho Viejo is open to donating the requisite right-of-way for the SE Connector. This is a significant cost and time savings for the County that will greatly benefit the overall success of the NE/SE Connector project.

## Water Supply Plan & Preliminary Water Budget

The Project will be served by the County Water Utility with the construction of a new 12" water

ORA-8

line in College Drive connecting to the existing 16" main in Richards Avenue. Please refer to the attached plans and the Water Utility Service Availability Analysis for further details.

The Preliminary Project Water Budget is 34.24 acre feet per year, as described below:

<i>Use</i>	<i>AFY/Unit</i>	<i>Unit Count</i>	<i>Total AFY</i>
Multi-Family	0.16	214	34.24

### **Liquid Waste Disposal**

The Project will be served by Ranchland Utility Company. On-site wastewater collection will be accomplished via a series of 6" gravity and 2" force main service lines, flowing into a new 3" force main commencing at the northwest corner of the apartments and connecting to the existing 3" force main at the intersection of Burnt Water and Deans Court. Please refer to the attached Conceptual Sanitary Sewer Plan for further information.

### **Terrain Management**

Storm water runoff from the Project will be collected in a series of small, shallow drainage swales integrated into the landscaped common areas, which maximizes passive irrigation. Please refer to the Conceptual Terrain Management Plan for further information.

### **Landscaping Concepts**

As described above, storm water management at the apartment community will be integrated with the landscaping, which will include a combination of native, drought tolerant grasses, shrubs, evergreens, and deciduous trees. Seasonal flowering plants will also be incorporated. In addition to the passive water harvesting described above, storm water will be actively harvested in a series of below-ground cisterns connected to the irrigation system. A conceptual landscape plan is included to provide the intent of the design. A detailed landscape plan will be included in the pending Development Plan submittal.

Water harvesting will be provided in accordance with County Ordinance 2003-6. Conceptually, the cisterns would total 180,000 gallons (roofed area of 120,000 s.f. x 1.5), but shall be reduced upon submittal of the Final Development Plan application and the associated landscaping water budget.

### **Open Space & Trails**

The Project will comply with the minimum 50% open space requirement of the CCD Ordinance.

An east-west pedestrian trail will be constructed along the north side of College Drive along the subject property's frontage. In addition, a twenty foot trail easement is proposed along the west side of the power line easement east of the subject property.

DBA - 9

### **Archaeology**

An archaeological survey was performed as part of the Rancho Viejo master planning process and an archaeologically significant site is preserved in an easement at the east end of the 56.91-acre master tract. There are no archaeological sites identified on the 22.0-acre subject parcel.

### **Solid Waste**

The apartments will have a series of dumpsters that will be screened and gated. Weekly collection will be contracted with a local waste collection company.

### **Lighting & Signage**

As depicted in the attached Conceptual Lighting & Signage Plan, site lighting in the apartment community will be combination of 25-foot pole mounted lights along the driveways and in the parking areas, 9-foot post top lights along the pedestrian walkways, and building mounted sconces. All lights will be shielded and full cut-off in accordance with County requirements. Regarding signage, two monument signs are proposed on either side of the main entrance. Lighting and signage details are attached for your reference.

### **Environmental Performance Standards**

The Project will comply with all County codes as they pertain to environmental performance standards. Furthermore, environmental protection is accomplished through (1) the preservation of open space and existing vegetation; (2) passive irrigation through drainage swales; (3) active water harvesting for irrigation purpose; (4) night sky protection; and (5) pedestrian trail improvements.

In support of this request, the following documentation is included herewith for your review and consideration:

- ☐ Development Permit Application
- ☐ Warranty Deed & Letters of Authorization
- ☐ College North Master Plan (1997)
- ☐ Water Utilities Service Availability Analysis
- ☐ Landscape Concept Plan
- ☐ School Impact Form
- ☐ Legal Lot of Record
- ☐ Proof of Property Taxes Paid
- ☐ Traffic Impact Analysis – 4 copies
- ☐ Master Plan Submittal Drawings – 13 full size & one reduced set

Finally, included herewith is a check in the amount of \$1,250.00 for the application fees, calculated as follows:

OBA - 10

Application Fee	100.00
4 Notice Boards	100.00
Inspection	150.00
MP Amendment	250.00
TIA	500.00
Fire Review	100.00
<u>Fire Inspection</u>	<u>50.00</u>
Total	\$1,250.00

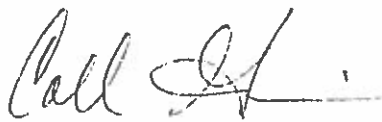
Please do not hesitate to contact us should you have any questions or need additional information.

Thank you for your consideration.

Sincerely,



Jennifer Jenkins



Colleen C. Gavin, AIA

**JenkinsGavin Design & Development, Inc.**

OBA-11





1. DEEDICATION PLAT OF RICHARDS AVE CORRIDOR, PREPARED BY  
FERRERA ENGINEERING CONSULTANTS, DATED MAY 1987.
2. DIVISIONS OF LANDS OF RANCHO VECO PARTNERSHIP RECORDED  
IN BOOK 210, PAGE 032.
3. SUBDIVISION PLAT PREPARED FOR RANCHO VECO PARTNERSHIP  
RECORDED IN BOOK 242, PAGE 031.
4. SUBDIVISION PLAT PREPARED FOR RANCHO VECO PARTNERSHIP,  
RECORDED IN BOOK 230, PAGE 021.
5. LAND DIVISION PLAT RECORDED IN PLAT BOOK 152, PAGE 002

SEC 16

1990

Year	Percent
1950	7
1955	8
1960	9
1965	10
1970	11
1975	11.5
1980	12

N/T SAVIN PE COMMUNITY COLLEGE  
8324 P 208  
PLAT 180/203

WANT WITH  
REGULATIONS  
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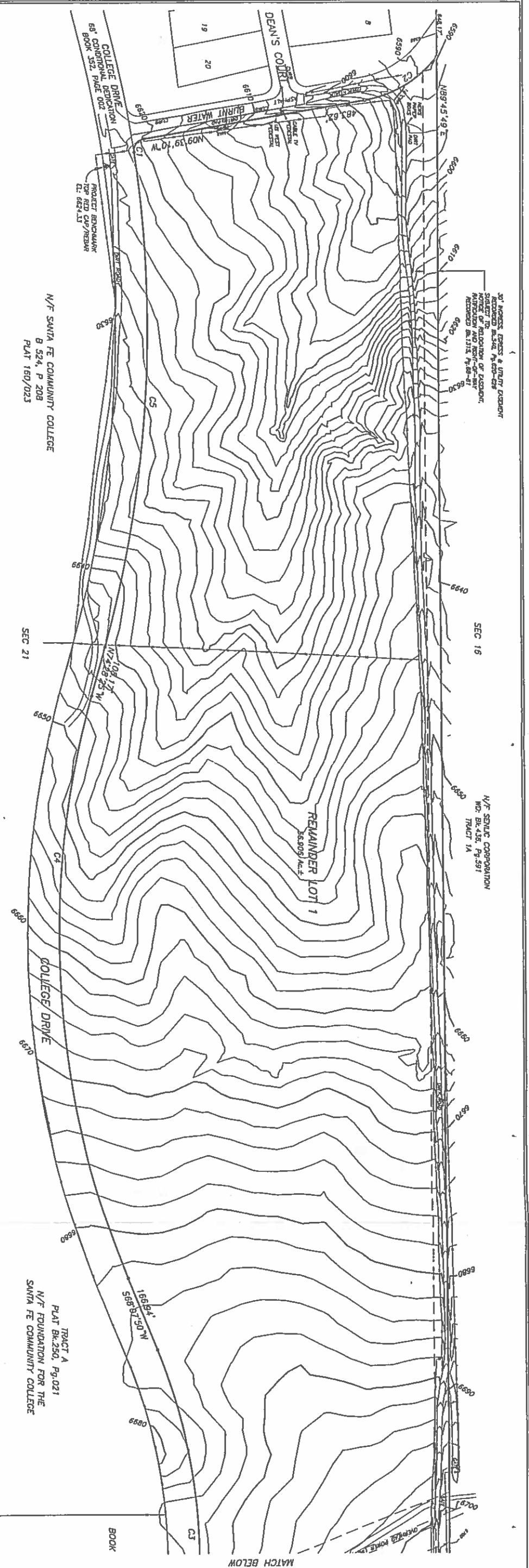
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SHEET 1-1

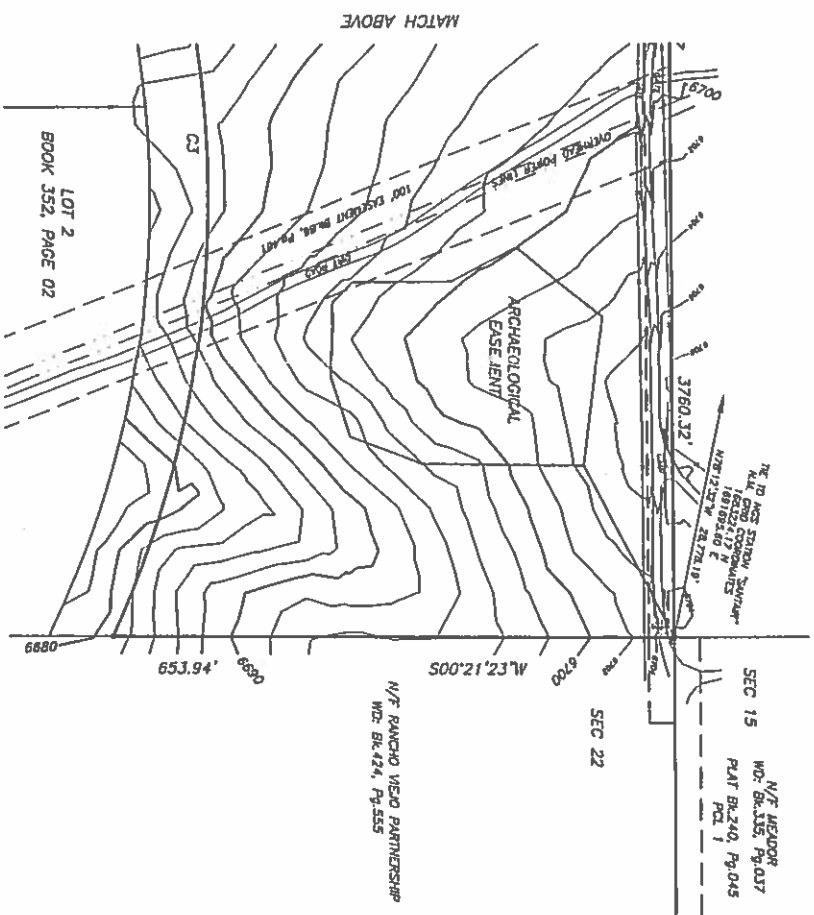




CURVE	DATA	RADIUS	ARC	CHORD	CURV. DIST.
C1	68° 31' 31"	25.00'	38.72'	35.00'	1024.05 106.74'
C2	42° 31' 31"	250.00'	165.55'	181.32'	1397.24 36.74'
C3	46° 30' 02"	1254.00'	1001.90'	874.42'	1085.37 109.74'
C4	37° 23' 45"	1866.00'	1783.17'	1760.52'	586.19 43.74'
C5	24° 02' 37"	2354.00'	1971.76'	1063.91'	1085.29 43.74'

NOTE:  
THIS IS NOT A PROPERTY SURVEY. APPARENT PROPERTY CORNERS  
ARE SHOWN FOR ORIENTATION ONLY. BOUNDARY DATA SHOWN IS  
FROM PREVIOUS SURVEY REFERENCED HEREON.  
THIS PLAT SUBJECT TO ANY RESTRICTIONS, COVENANTS AND  
EASEMENTS OF RECORD.  
UTILITY SYMBOLS SHOWN HEREON ARE LARGER  
THAN THEIR ACTUAL SIZE FOR VIEWING PURPOSES

LEGEND:  
BEARINGS ARE NEW MEXICO STATE PLAIN, CENTRAL ZONE. DISTANCES ARE GROUND  
AT 6800' ASL. GROUND TO GRID SCALE FACTOR = 0.99958  
ELEVATIONS ARE NAVD84, DERIVED FROM GPS BASE STATION DAWSON2  
ELEVATION=6572.378  
○ DENOTES FOUND PROPERTY CORNER  
— DENOTES 2' CONTOUR INTERVAL  
— DENOTES 10' CONTOUR INTERVAL  
⊙ DENOTES UTILITY FEDESTAL  
— DENOTES FENCE



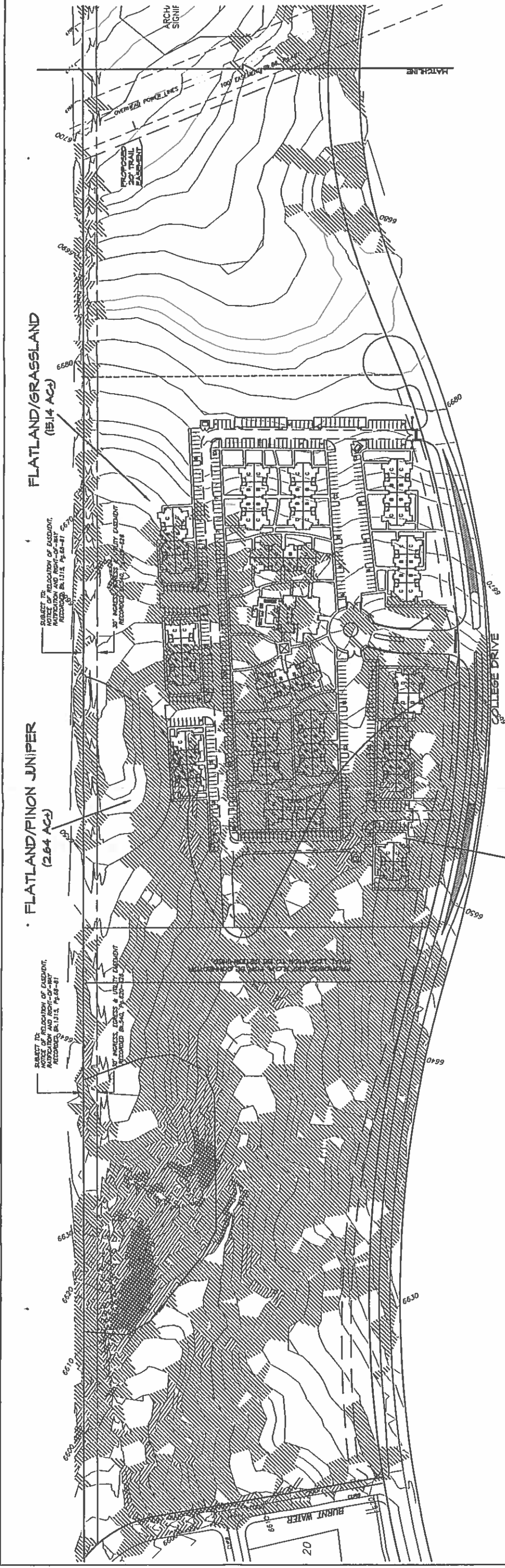
SURVEYORS CERTIFICATE:  
I HEREBY CERTIFY THAT THIS MAP IS A TRUE REPRESENTATION OF A  
SURVEY MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION  
IN ACCORDANCE WITH THE SURVEYING ACT AND THE RULES AND REGULATIONS  
OF THE BOARD OF SURVEYING AND MAPPING, AND THAT THE SURVEYING  
AND MAPPING WERE MADE IN ACCORDANCE WITH THE MINIMUM STANDARDS  
FOR TOPOGRAPHIC SURVEYS IN NEW MEXICO.

EDWARD W. TRULLIO  
N.M. PL. 712332

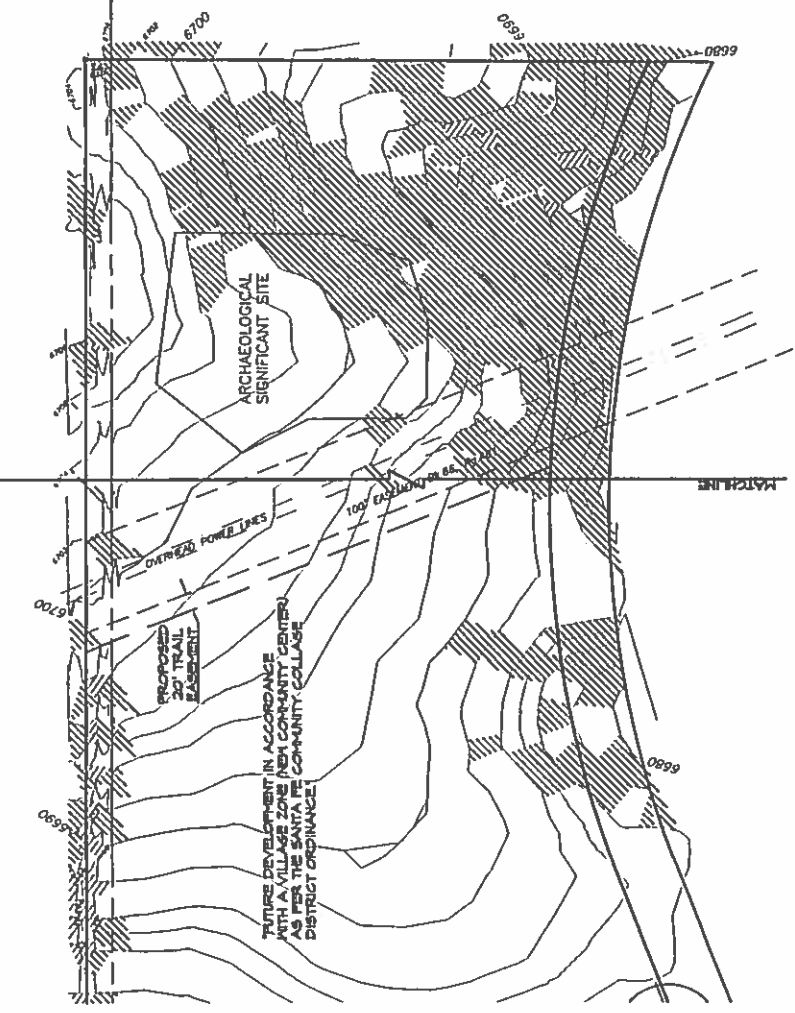


TOPOGRAPHIC MAP  
OF  
COLLEGE HEIGHTS REMAINDER LOT 1  
RECORDED IN PLAT BOOK 422, PAGE 05-07  
WITHIN SECTION 21, T.16N., R.9E., N.M.P.M.  
COUNTY OF SANTA FE, N.M.

DBA-14  
DAWSON SURVEYS INC.  
PROFESSIONAL LAND SURVEYORS  
2302B GUANO ENTRADA  
SANTA FE, N.M. 87507  
FILED 9/23/10 PM DATE 01/18/13



FLATLAND/PINON JUNIPER  
(9.21 AC)



SLOPE LEGEND

- 0-5% SLOPE
- 5%-10% SLOPE USING 2' CONTOUR INTERVAL
- 10% -15% SLOPE USING 2' CONTOUR INTERVAL
- 15% AND GREATER SLOPE USING 2' CONTOUR INTERVAL

SEE SHEET 3 FOR SOURCE OF TOPOGRAPHY SHOWN HEREIN.

LANDSCAPE TYPE

FLATLAND/PINON JUNIPER 15.14 ACRES  
FLATLAND/GRASSLAND 9.25 ACRES

ZONING ALLOWANCE

9.5 DU/ACRE (MINIMUM) 20.4 DU MINIMUM  
9.5 DU/ACRE (MINIMUM) 45.4 DU MINIMUM

MINIMUM TOTAL - 65.5 DWELLING UNITS  
MAXIMUM TOTAL NOT DEFINED



1"=100'

REVISIONS	
DATE	BY
03/24/14	OG

DESIGN ENGINEER

401 Loma Street, Suite 6, Santa Fe, New Mexico  
507 191-1991

ELEVATION  
MASTER PLAN

LAND TYPE ANALYSIS

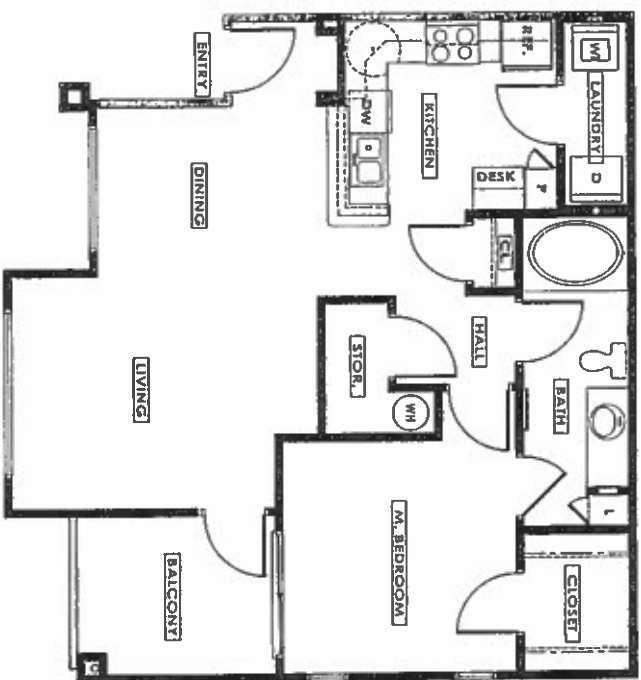
SCALE	DATE
1"=100'	12/02/2013
DRAWN BY / APPROVED BY	

OGAITS



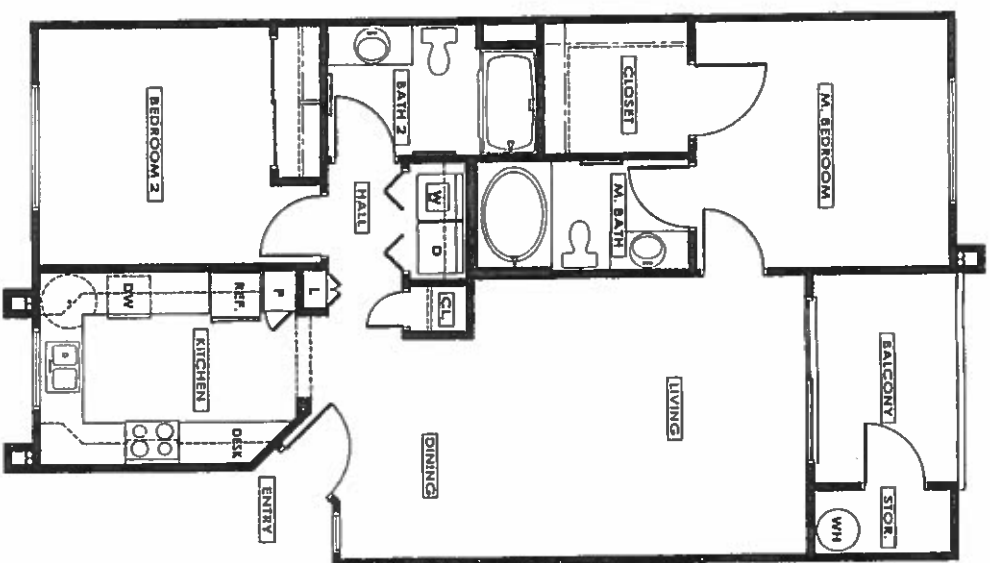






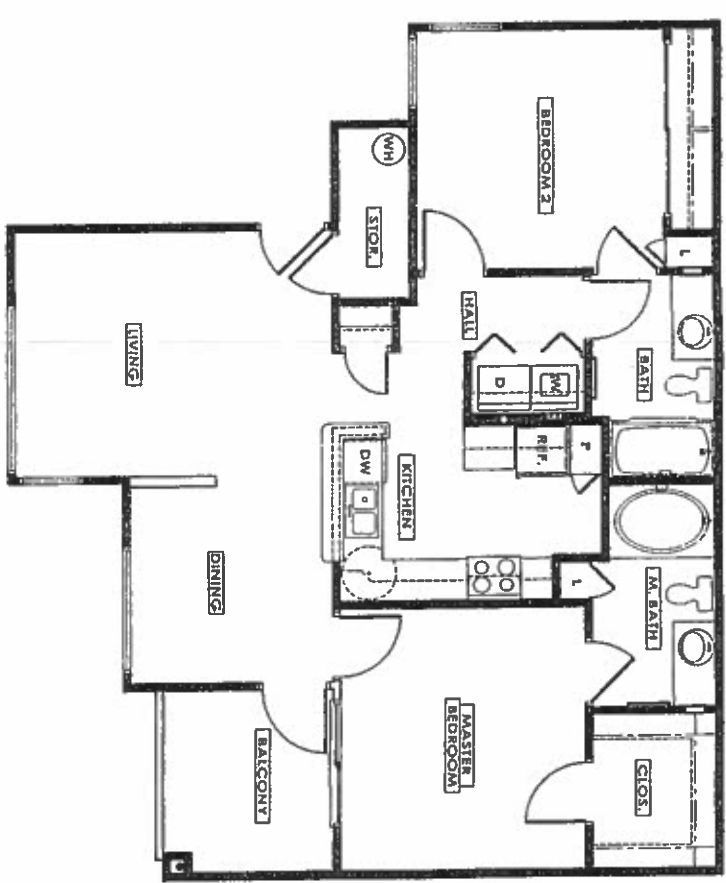
1 BEDROOM UNIT PLAN

SCALE 1/8" = 1'-0"



2 BEDROOM UNIT PLAN

SCALE 1/8" = 1'-0"

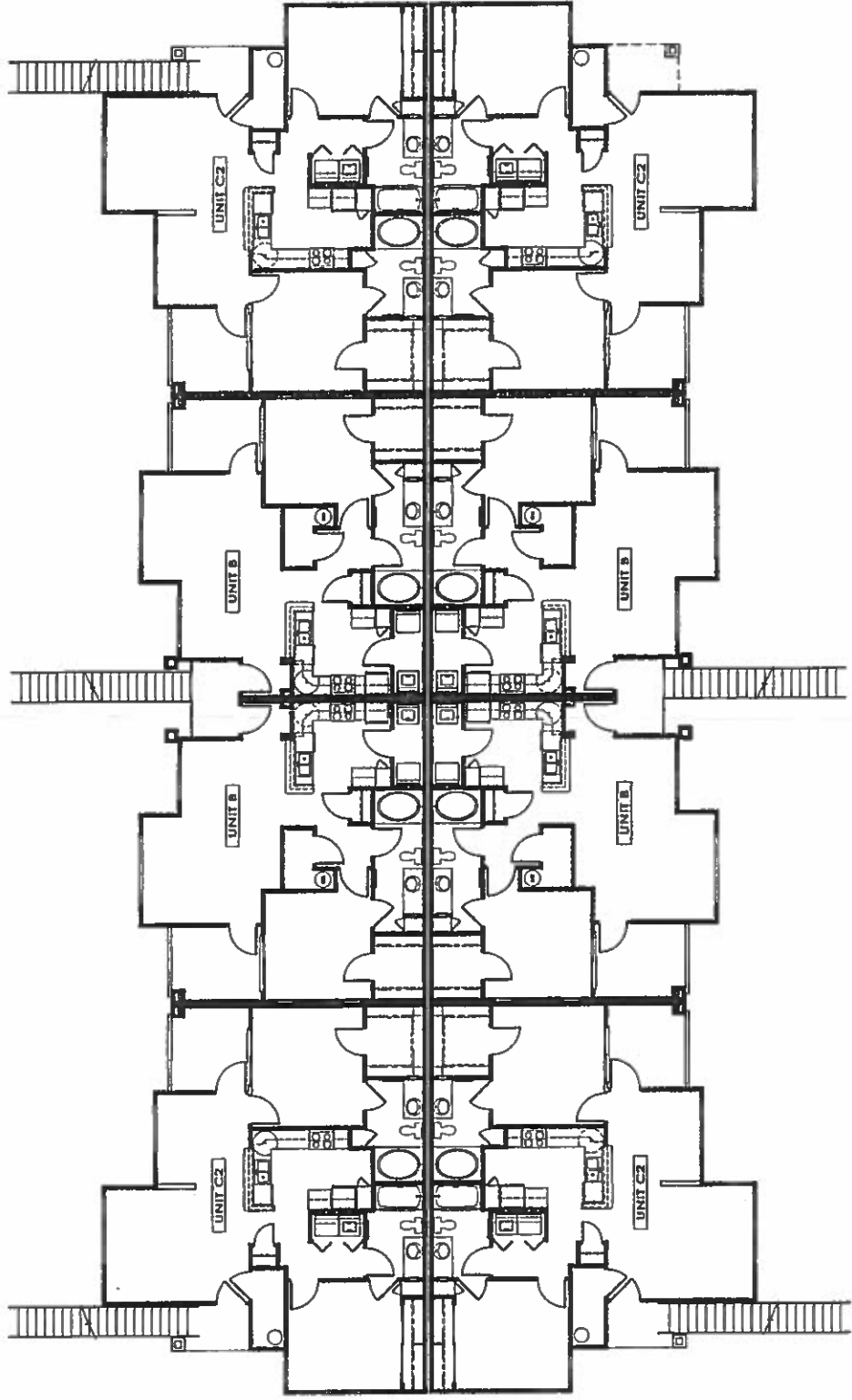


2 BEDROOM UNIT PLAN

SCALE 1/8" = 1'-0"

# Elevation

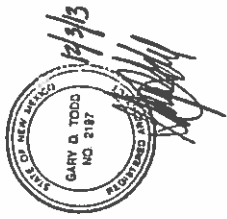




FIRST FLOOR BUILDING PLAN

SCALE: 1/8" = 1'-0"

# Elevation





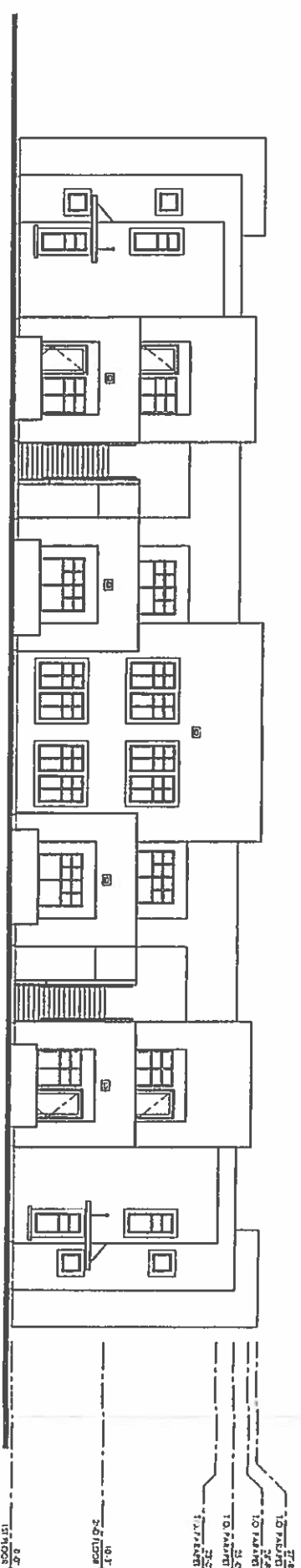


— Santo Fe, New Mexico

Project No. 12-2041-01      Date 12-06-13

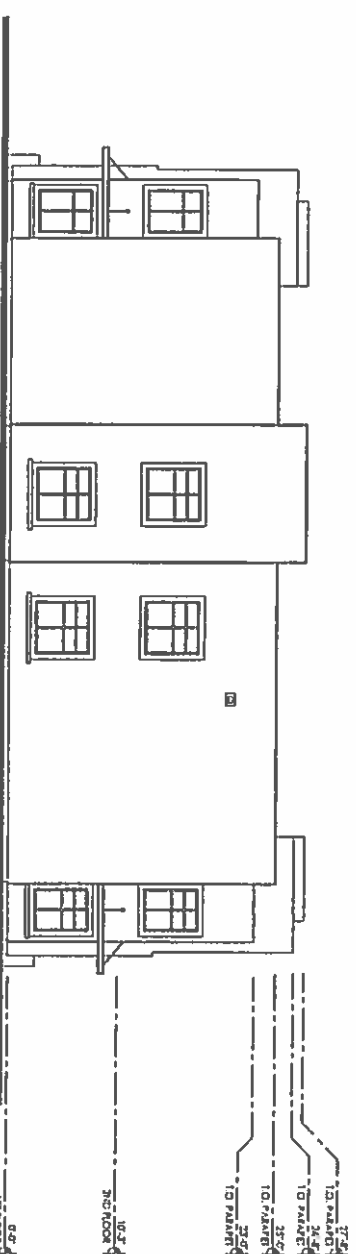


## CONCEPTUAL BUILDING ELEVATIONS



**FRONT ELEVATION**  
**TYPICAL GARDEN BUILDING**

0.1-0.2%



**SIDE ELEVATION**  
TYPICAL GARDEN BUILDING

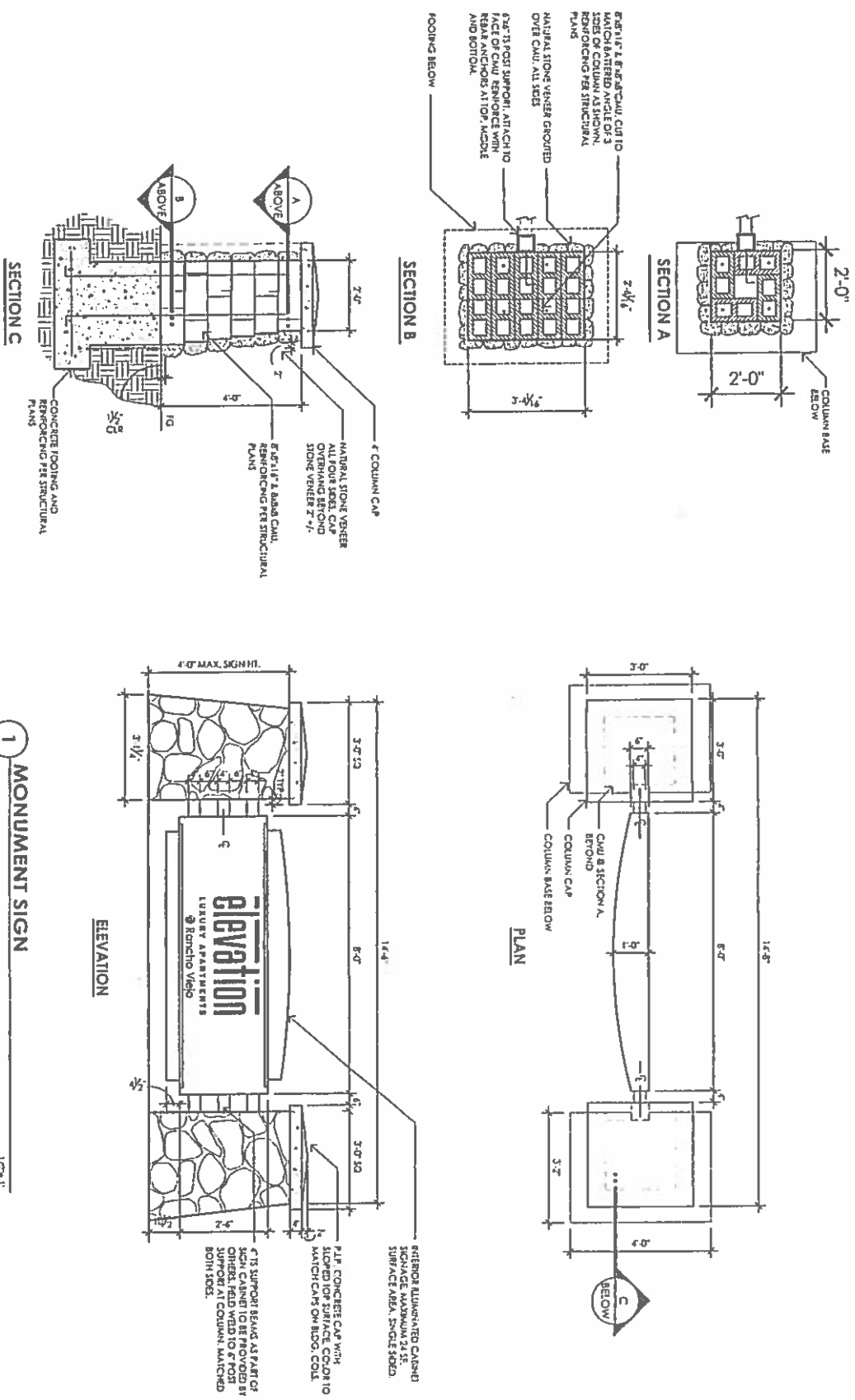
1/5=1.5



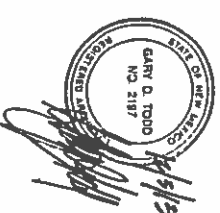


## CONCEPTUAL SIGNAGE

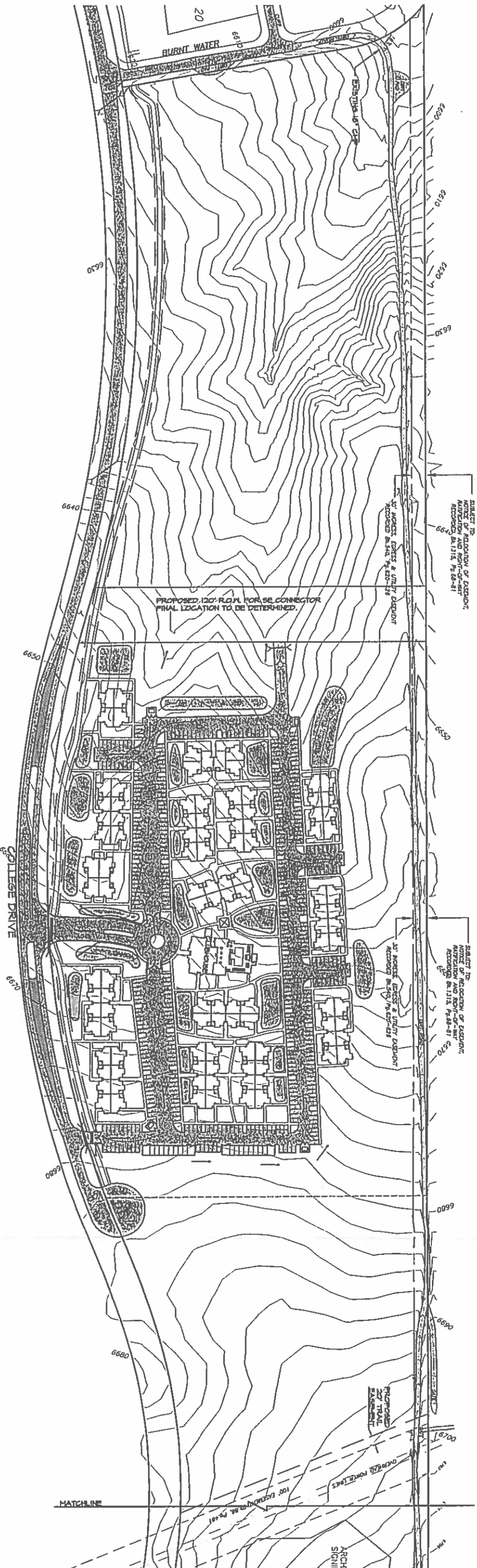
## Elevation



SCALE: 1/8" = 1'-0"

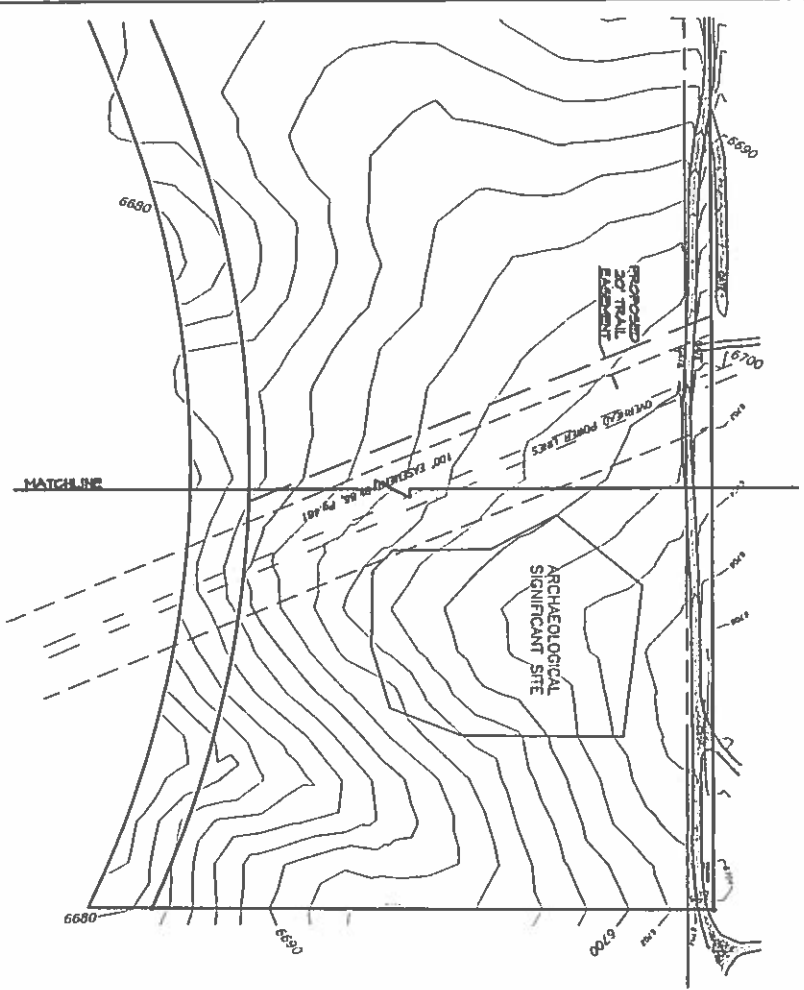
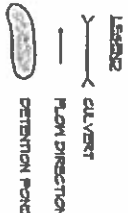






**TERRAIN MANAGEMENT CONCEPTS**

1. ALL PONDING SHALL BE A MINIMUM OF 5- FEET FROM BUILDINGS.
2. ALL APARTMENT PROJECT INTERIOR PONDS SHALL BE 6 TO 8-INCHES DEEP.
3. MAXIMUM GUT SLOPES 3:1
4. MINIMUM FILL SLOPES 3:1
4. A SWEEP PLAN IS REQUIRED FOR PROJECT DEVELOPMENT.
5. APARTMENT COMPLEX SHALL HAVE CENTRALIZED PONDS.
6. STORM-WATER DETENTION PONDS SHALL BE DESIGNED TO RELEASE LESS THAN OR EQUAL TO PRE-DEVELOPMENT STORM-WATER FLOW RATES.
7. THERE ARE NO FEMA DESIGNATED FLOOD ZONES NOR AREAS WITH FLOODS IN EXCESS OF 25 CFS ON THE PROPERTY.



**DESIGN ENGINEER**

1881 Lakes Street, Suite C, Santa Fe, New Mexico  
980 981-1991

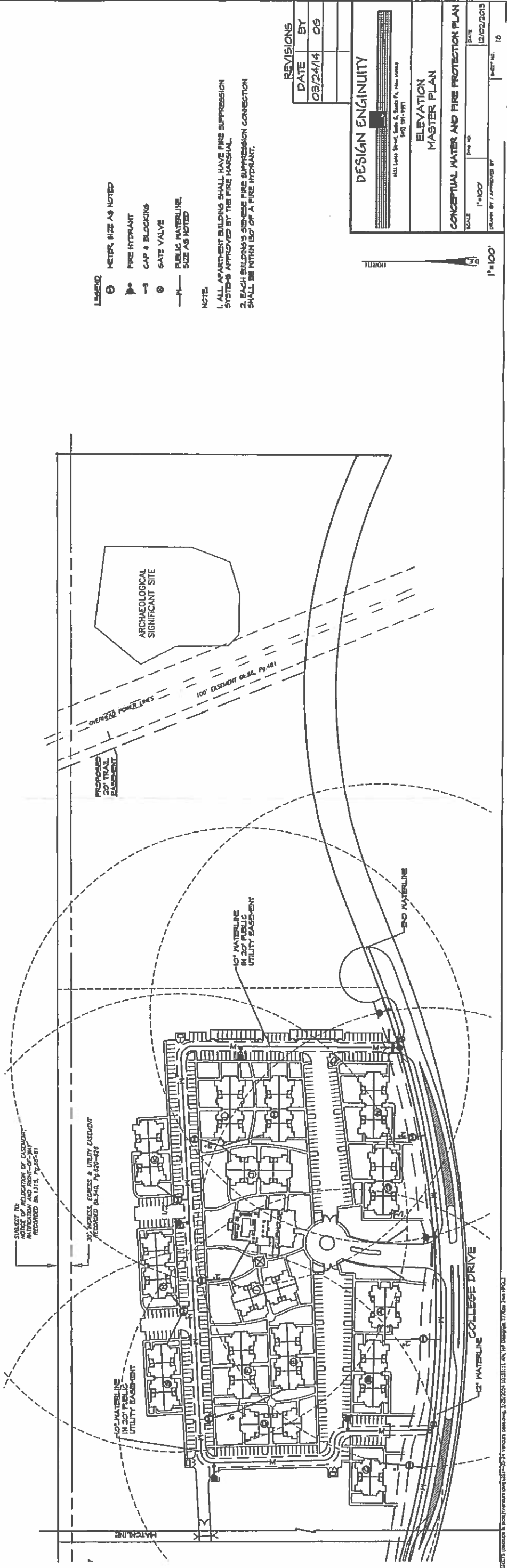
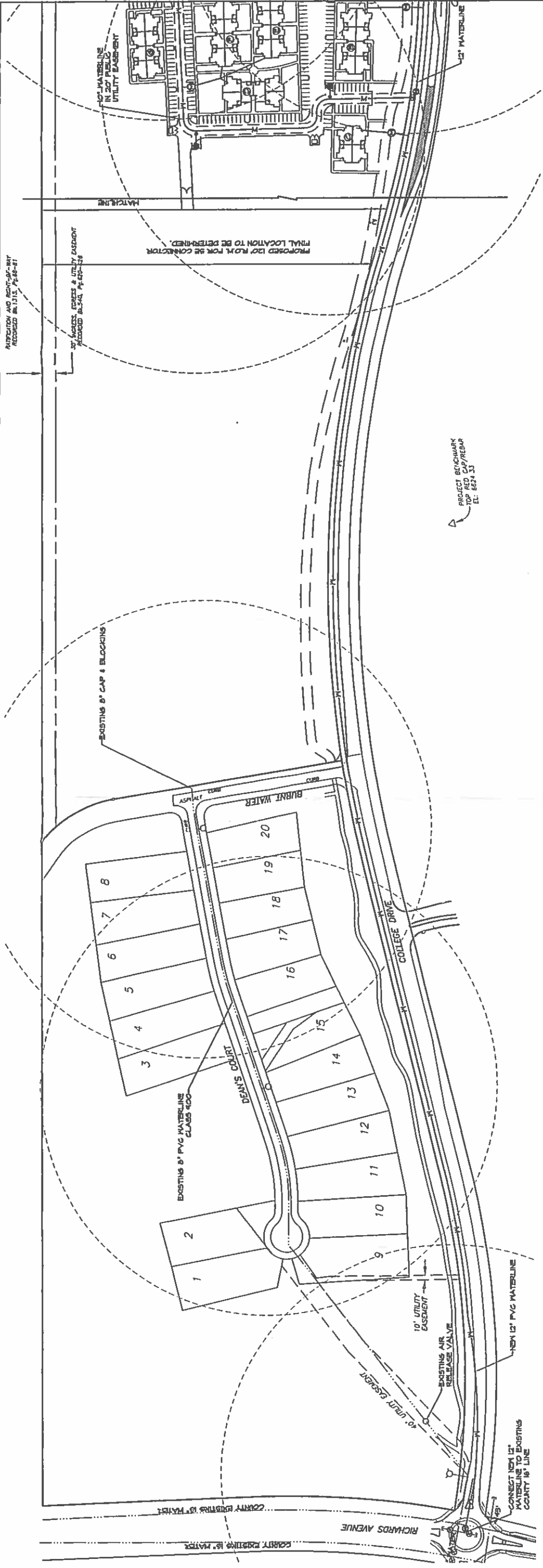
**ELEVATION  
MASTER PLAN**

**CONCEPTUAL TERRAIN MANAGEMENT PLAN**

SCALE: 1"=100' DRAWN BY: J. J. JENNIFER DATE: 12/07/2018

REVISIONS	
DATE	BY
03/24/14	06

MDA-07



- LEGEND
- METER, SIZE AS NOTED
  - FIRE HYDRANT
  - |— CAP & BLOCKING
  - ⊙ GATE VALVE
  - M— PUBLIC WATERLINE, SIZE AS NOTED

NOTE:

1. ALL APARTMENT BUILDINGS SHALL HAVE FIRE SUPPRESSION SYSTEMS APPROVED BY THE FIRE MARSHAL.
2. EACH BUILDING'S SIDEWALK FIRE SUPPRESSION CONNECTION SHALL BE WITHIN 150' OF A FIRE HYDRANT.

REVISIONS	
DATE	BY
03/24/14	OG

DESIGN ENGINEER

1433 Lakes Street, Suite C, South Fx, New Haven, CT 06511-1991

ELEVATION MASTER PLAN

CONCEPTUAL WATER AND FIRE PROTECTION PLAN

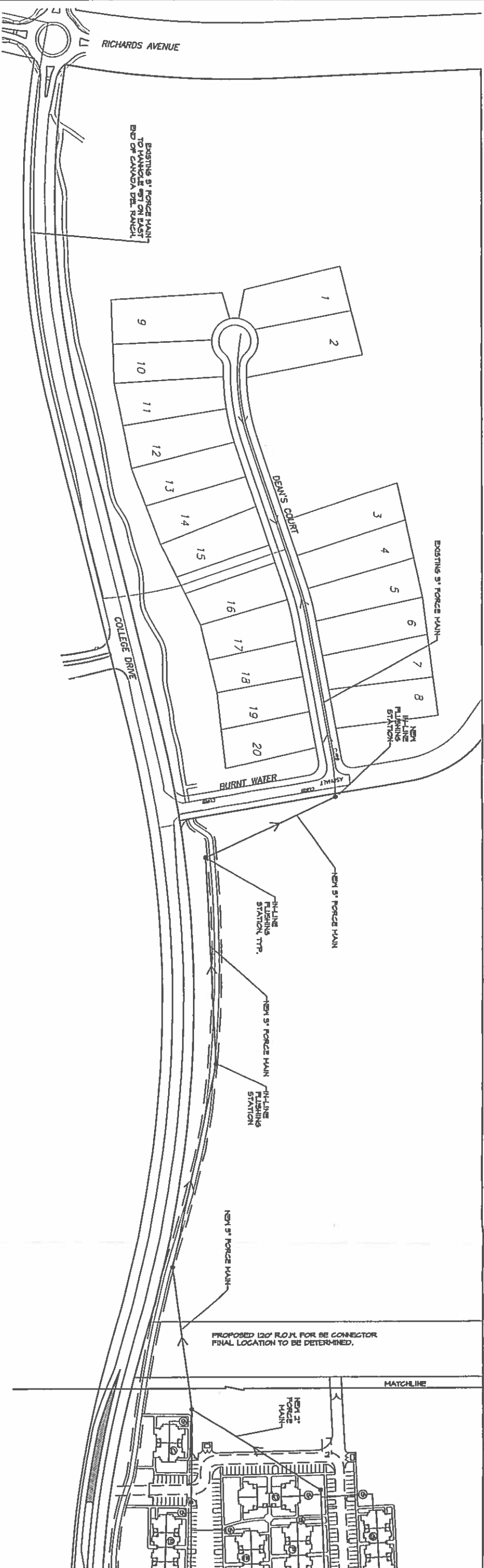
SCALE: 1"=100'

DATE: 12/02/2015

PLANNED BY / APPROVED BY: [Signature]

SHEET NO.: 16

0122-08



SUBJECT TO  
APPROVAL OF RECORDING OF EASEMENT  
AND RECORDING OF EASEMENT  
RECORDED IN 113, 75-66-81

30' INDEX EGRESS & UTILITY EASEMENT  
RECORDED IN 113, 75-66-81

2" FORCE MAIN

NEW 2" FORCE MAIN

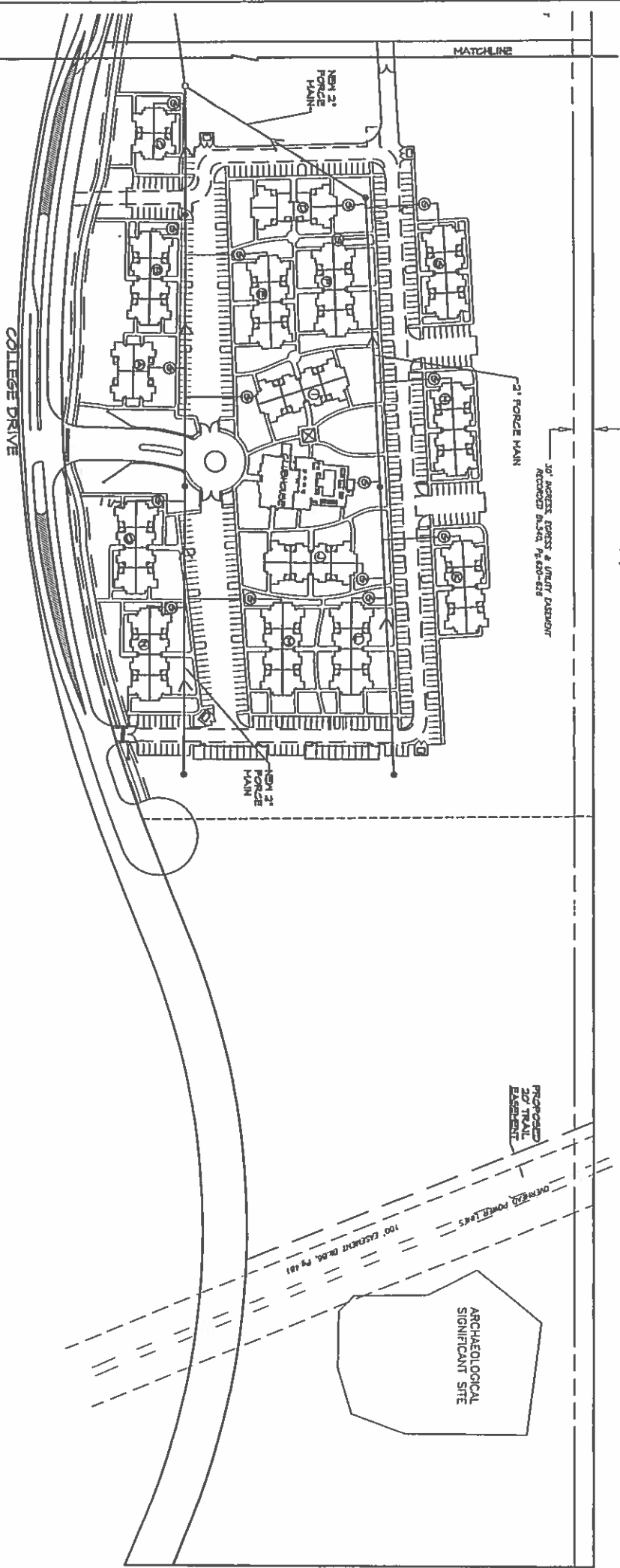
NEW 2" FORCE MAIN

PROPOSED 20' TRAIL EASEMENT

ARCHAEOLOGICAL SIGNIFICANT SITE

100' EASEMENT (DECK, PG. 181)

OPENED POWER LOTS



LEGEND

- LOW PRESSURE 8" HIGH SEWER MAIN EXISTING
- LOW PRESSURE SEWER MAIN NEW SIZE AS NOTED
- 4" DIAMETER FLUSHING STATION
- 8" DIAMETER PUMP

DESIGN ENGINEER

1410 South Street, Suite 2, Lincoln, NE, 68502  
(402) 341-1000

ELEVATION MASTER PLAN

CONCEPTUAL SANITARY SEWER PLAN

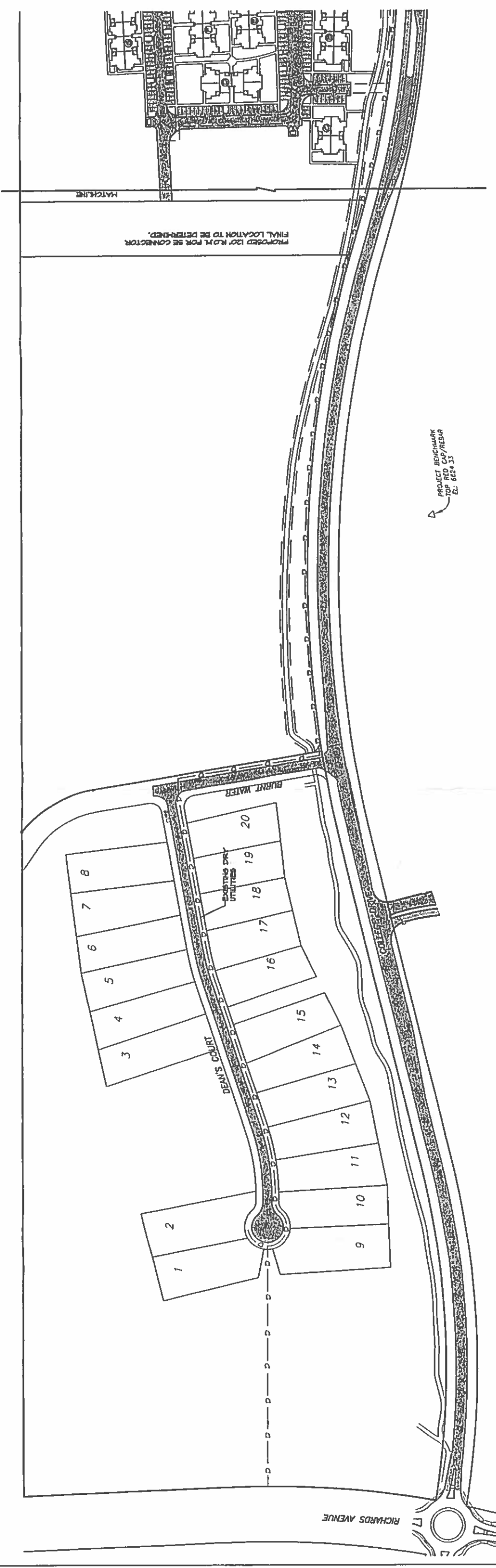
DATE	BY
08/24/14	OG

SCALE 1"=100'

DATE 12/02/2015

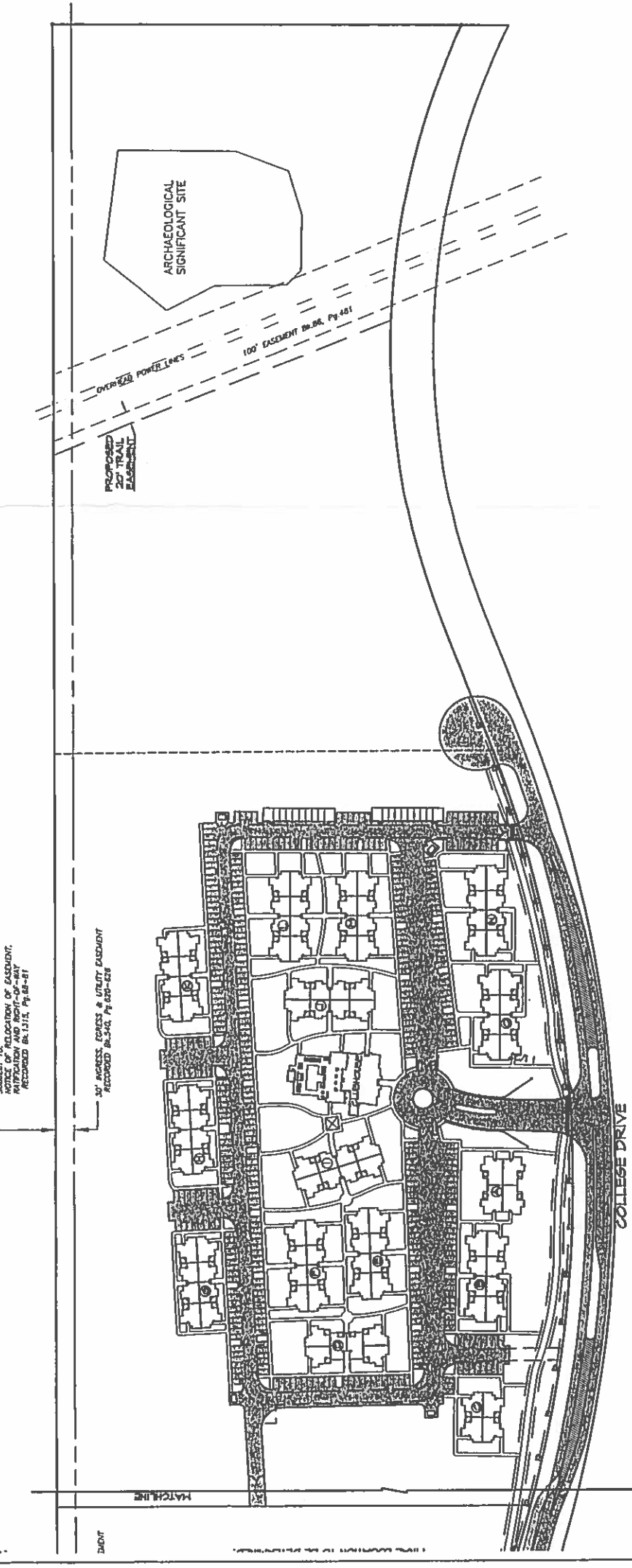
00A-70A





SUBJECT TO:  
NOTICE OF RELOCATION OF EASEMENT,  
PARTICULAR AND RIGHT-OF-WAY  
RECORDED BK. 1315, PG. 68-69

30' ACCESS, EGRESS & UTILITY EASEMENT  
RECORDED BK. 3-03, PG. 420-428



- LEGEND
- D --- EXISTING DRY UTILITY  
SHARED TRENCH  
(6"AS), TELEPHONE, ELECTRIC & CABLE
  - D --- PROPOSED DRY UTILITY  
SHARED TRENCH  
(6"AS), TELEPHONE, ELECTRIC & CABLE

NOTE:  
ALL UTILITIES LINES SHALL BE UNDERGROUND.

REVISIONS	
DATE	BY
03/24/14	OG

DESIGN ENGINEER

1421 Lewis Street, Suite 200, Santa Fe, New Mexico  
(505) 991-9991

ELEVATION  
MASTER PLAN

CONCEPTUAL DRY UTILITY PLAN

SCALE: 1"=100'

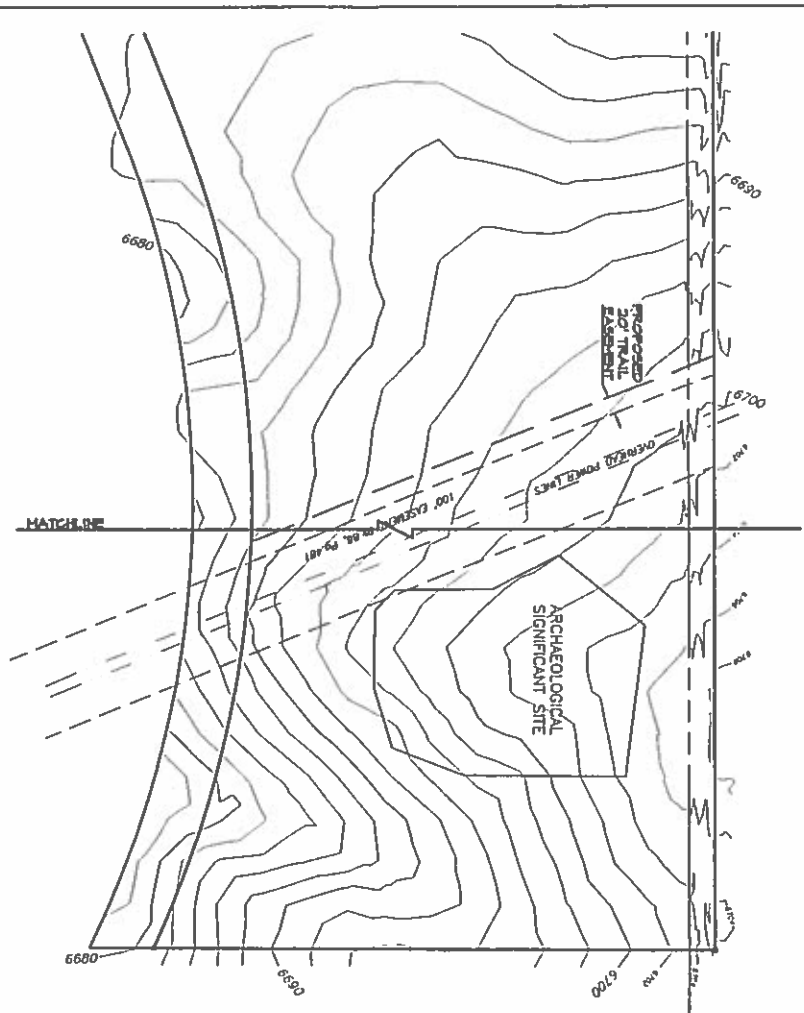
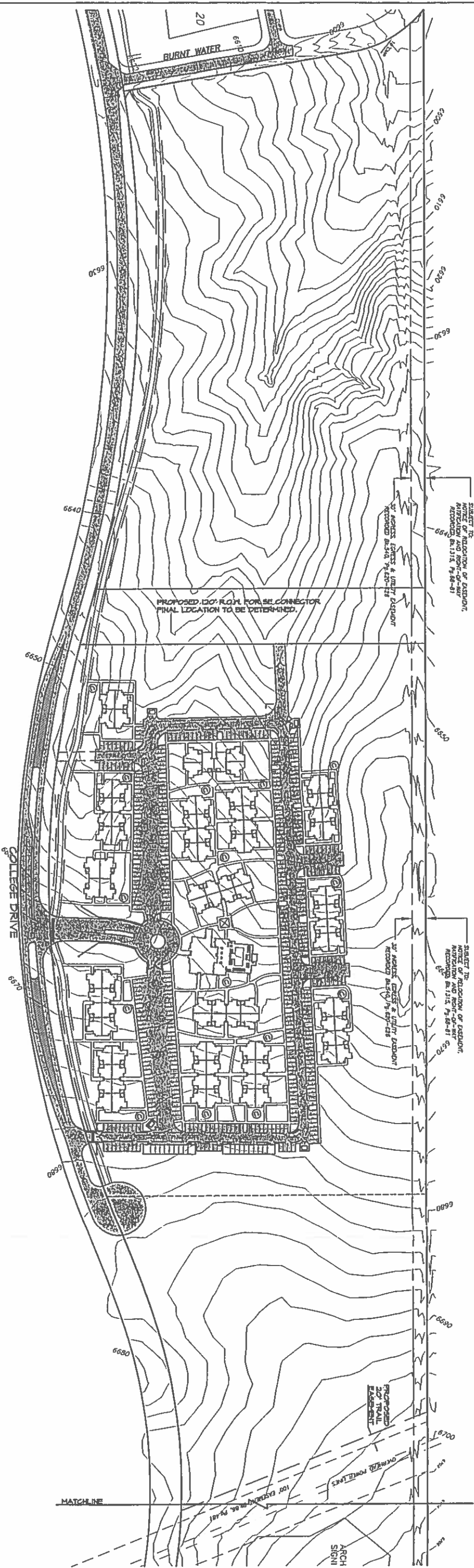
SHEET NO. 1A

DATE: 12/02/2013

DESIGN BY / APPROVED BY

013A-30





**WATER HARVESTING PLAN**  
WATER HARVESTING PLANS IN COMPLIANCE WITH SANTA FE COUNTY ORDINANCE 2009-6 SHALL BE  
SUBMITTED WITH BUILDING PERMIT APPLICATION.  
THE APARTMENT COMPLEX SHALL HAVE A CISTERN SYSTEM FEEDING ALL THE LANDSCAPING. SUCH  
SYSTEM SHALL BE SIZED TO HOLD 15 GALLONS PER SQUARE FOOT OF ROOFTOP AREA OR HOLD A MONTH'S  
WORTH OF LANDSCAPE WATER.

© POSSIBLE CISTERN LOCATION







ELEVATION AT RANCHO VIEJO  
LANDSCAPE CONCEPT PLAN



